

United States
Circuit Court of Appeals

For the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
vs.

SCIENTIFIC NUTRITION CORPORATION,
d/b/a Capolino Packing Corporation,
Respondent.

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WARE-
HOUSEMEN AND HELPERS OF AMER-
ICA, AFL., and CALIFORNIA STATE
COUNCIL OF CANNERY UNIONS, AFL,
Intervenors.

Transcript of Record

Upon Petition for Enforcement of an Order of the
of the National Labor Relations Board

No.11694

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Circuit Court of Appeals

For the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,
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vs.

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Respondent.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the United States Circuit Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

SCIENTIFIC NUTRITION CORPORATION,
d/b/a Capolino Packing Corporation,
Respondent.

CERTIFICATE OF THE NATIONAL LABOR
RELATIONS BOARD

The National Labor Relations Board, by its Acting Chief of the Order Section, duly authorized by Section 203.67, Rules and Regulations of the National Labor Relations Board, Series 4, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of a proceeding had before said Board entitled, "In the Matter of Scientific Nutrition Corporation, d/b/a Capolino Packing Corporation, and Food, Tobacco, Agricultural and Allied Workers Union of America, CIO, and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, Party to the Contract," the same being Case No. 20-C-1422 before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Copy of order designating Sidney Lindner Trial Examiner for the National Labor Relations Board, dated May 14, 1946.

(2) Stenographic transcript of testimony held before Trial Examiner Lindner on May 14, 1946, together with all exhibits introduced in evidence.

(3) Copy of Trial Examiner Lindner's Intermediate Report, dated June 20, 1946 (annexed to item 7 hereof); copy of order transferring case to the Board, dated June 24, 1946, together with copy of affidavit of service thereof.

(4) Copy of AFL's exceptions to the Intermediate Report.

(5) Copy of notice of hearing for the purpose of oral argument before the Board, dated September 17, 1946.

(6) Copy of list of appearances at oral argument held before the Board on October 1, 1946.

(7) Copy of decision and order issued by the National Labor Relations Board on December 13, 1946, with intermediate report annexed, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof, the Acting Chief of the Order Section of the National Labor Relations Board, being thereunto only authorized as aforesaid, as hereunder set her hand and affixed the seal of the National Labor Relations Board in the city

of Washington, District of Columbia, this 18th day of July, 1947.

[Seal] /s/ CLARA M. MARTIN,
 Acting Chief,
 Order Section.

BOARD'S EXHIBIT No. 1(a)

United States of America
Before the National Labor Relations Board
20th Region

Case No. 20-C-1422

Date Filed April 22, 1946

In the Matter of

SCIENTIFIC NUTRITION CORPORATION,
d/b/a Capolino Packing Corporation,

and

FOOD, TOBACCO, AGRICULTURAL AND
ALLIED WORKERS UNION OF AMER-
ICA, CIO

THIRD AMENDED CHARGE

Pursuant to Section 10(b) of the National Labor Relations Act, the undersigned hereby charges that Scientific Nutrition Corporation, d/b/a Capolino Packing Corporation, at Atwater, California, employing 200 workers in fruit and vegetable processing and canning, has engaged in and is engaging

in unfair labor practices within the meaning of Section 8 subsections (1) and (3) of said Act, in that on or about March 1, 1946, said Company granted exclusive recognition to, and renewed or executed a closed-shop collective bargaining agreement with a local of the Teamsters Union (AFL). At that time, there was a question of representation pending and unresolved before the National Labor Relations Board (Case No. 20-R-1464), of which the Company had notice and in which it had participated through its agents.

On or about June 22, 1945, said Company by its officers, agents and employees discharged Gus Cedar, a boiler room operator, because of his refusal to become or remain a member of said Teamsters' Union (AFL), and ever since has refused to reinstate him, in violation of Section 8, subdivision (3) of said Act.

Since May of 1945, said Company has required membership in said Teamsters' Local as a condition of employment.

By the acts set forth above and by granting access to its plant to representatives of said Teamsters' Local, by urging, persuading, and warning its employees to become and remain members of said Teamsters' Local, by other acts of preference and assistance and by other acts and statements, said Company by its officers, agents and employees has interfered with, restrained and coerced its employees in the exercise of their rights guaranteed in Section 7 of the said Act, in violation of Section 8, subdivision (1) of said Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

FOOD, TOBACCO, AGRICULTURAL & ALLIED WORKERS UNION OF AMERICA, CIO.

By /s/ BERTRAM EDISES,
Attorney,
150 Golden Gate Avenue,
San Francisco, Cal.
Telephone ORdway 9253.

Subscribed and sworn to before me this 22nd day of April, 1946, at San Francisco, Calif.

/s/ JOHN PAUL JENNINGS,
Regional Attorney, NLRB,
20th Region.

BOARD'S EXHIBIT No. 1(b)

United States of America
Before the National Labor Relations Board
Twentieth Region

Case No. 20-C-1422

In the Matter of

SCIENTIFIC NUTRITION CORPORATION,
d/b/a Capolino Packing Corporation,

and

FOOD, TOBACCO, AGRICULTURAL & AL-
LIED WORKERS UNION OF AMERICA,
CIO,

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WARE-
HOUSEMEN AND HELPERS OF AMER-
ICA, AFL,

Party to the contract.

COMPLAINT

It having been charged by Food, Tobacco, Agri-
cultural & Allied Workers Union of America, CIO,
that Scientific Nutrition Corporation, d/b/a Capo-
lino Packing Corporation, Atwater, California,
hereinafter called the respondent, has engaged in
and is now engaging in certain unfair labor prac-

tices affecting commerce as set forth in the National Labor Relations Act, 49 Stat. 449, herein called the Act, the National Labor Relations Board, herein called the Board, by the Regional Director for the Twentieth Region as agent for the Board, designated by the Board's Rules and Regulations, Series 3, as amended, Article IV, Section 1, hereby issues its Complaint and alleges as follows:

I.

The respondent, Scientific Nutrition Corporation, d/b/a Capolino Packing Corporation, is a New York corporation operating a plant at Atwater, California, where it is engaged in the business of processing and canning fruits and vegetables. The respondent, in the course and conduct of its business, causes, and at all times herein alleged continuously has caused in excess of 90 per cent of the products of its Atwater plant, valued at in excess of \$1,500,000 annually, to be sold and transported in interstate and foreign commerce from its Atwater plant to states and territories of the United States other than the State of California and to foreign countries.

II.

Food, Tobacco, Agricultural & Allied Workers Union of America, CIO, hereinafter called the FTA-CIO, and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Union of America, AFL, hereinafter called the

Teamsters, and Cannery Workers Union, Local 22382, AFL, hereinafter called Local 22382, are, and at all times hereinafter mentioned have been, labor organizations within the meaning of Section 2(5) of the Act.

III.

On or about May 8, 1945, and subsequent thereto, the respondent, through its officers and agents, engaged in a preconceived and continuous plan and course of action for the purpose of inducing its employees to change their affiliation from Local 22382 to the Teamsters. In furtherance of the plan and course of action, the respondent urged, persuaded, threatened, and warned its employees to become members of the Teamsters, permitted representatives of the Teamsters free entry into its plant to address and solicit its employees, and otherwise lent support to the Teamsters and assisted it in obtaining a majority of members among the respondent's employees. On or about May 18, 1945, the respondent entered into a contract with the Teamsters, recognizing that organization as the exclusive collective bargaining representative of the respondent's employees, and requiring membership in the Teamsters as a condition of employment. Thereafter, the respondent collected dues for the Teamsters by the institution of a payroll dues deduction system. At all times since May 18, 1945, the respondent has continued to enforce and give effect to its contract with the Teamsters.

IV.

By reason of the aid and assistance granted by the respondent to the Teamsters, the latter is a labor organization assisted by unfair labor practices and the contract referred to in paragraph III and any renewal or extension thereof, is illegal.

V.

On or about June 22, 1945, the respondent discharged its employee Gus Cedar and has at all times thereafter refused to reinstate said employee solely because he refused to join the Teamsters.

VI.

On or about October 5, 1945, the Board directed that a collective bargaining election be held among the employees of the respondent at its Atwater, California, plant. Pursuant to said Direction, an election was conducted among the said employees of the respondent on or about October 16, 1945, in which the employees were given a choice of three labor organizations, including the FTA-CIO. On or about February 15, 1946, the Board issued a Supplemental Decision and Order in which it directed that the election held should be set aside and that a new election should be conducted.

VII.

By all the acts of the respondent as set forth and described in paragraphs III, IV, V, and VI, above,

and by each of said acts, the respondent interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act, and by all of said acts and by each of them the respondent has engaged in, and is now engaging in unfair labor practices within the meaning of Section 8 (1) of said Act.

VIII.

By negotiating the contract referred to in paragraph III, by requiring membership in the Teamsters as a condition of employment, by administering and enforcing said contract, and by discharging Gus Cedar as alleged in paragraph V, above, the respondent discriminated, and is now discriminating in regard to hire, and tenure of employment and terms or conditions of employment against its employees and thus has discouraged, and is now discouraging, membership in the FTA-CIO, and thus has encouraged, and is now encouraging membership in the Teamsters, and thereby has engaged in, and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

VIII.

The activities of the respondent as set forth and described in paragraphs III through VII, inclusive, occurring in connection with the operations of the

respondent as described in paragraph I, above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and territories of the United States and with foreign countries and have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

XI.

The aforesaid acts of the respondent, as set forth in paragraphs III through VII, inclusive, constitute unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the Act.

Wherefore, the National Labor Relations Board on the 23rd day of April, 1946, issues its Complaint against the Scientific Nutrition Corporation d/b/a Capolino Packing Corporation, the respondent herein.

/s/ JOSEPH E. WATSON,
Regional Director.

BOARD'S EXHIBIT 1c

United States of America, Before the National
Labor Relations Board, Twentieth Region

In the Matter of

SCIENTIFIC NUTRITION CORPORATION,
d/b/a Capolino Packing Corporation

and

FOOD, TOBACCO, AGRICULTURAL & AL-
LIED WORKERS UNION OF AMERICA,
CIO.

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WARE-
HOUSEMEN AND HELPERS OF AMER-
ICA, AFL

Party to the Contract.

NOTICE OF HEARING

Please Take Notice that on the 7th day of May, 1946, at 10 o'clock in the forenoon in the Council Chamber of the City Hall, Merced, California, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the Complaint

attached hereto, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

A copy of the Charge upon which the Complaint is based is attached hereto.

You are further notified that you have the right to file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an answer to the said Complaint within ten (10) days from the service thereof.

Please Take Notice that duplicates of all exhibits which are offered in evidence will be required unless, pursuant to request or motion, the Trial Examiner in the exercise of his discretion and for good cause shown, directs that a given exhibit need not be duplicated.

In Witness Whereof the National Labor Relations Board has caused this, its Complaint and Notice of Hearing, to be signed by the Regional Director for the Twentieth Region on this 23rd day of April, 1946.

[Seal] /s/ JOSEPH E. WATSON,
Regional Director, National
Labor Relations Board.

BOARD'S EXHIBIT 1d

United States of America, Before the National
Labor Relations Board, Twentieth Region

Case No. 20-C-1422

In the Matter of

SCIENTIFIC NUTRITION CORPORATION,
d/b/a Capolino Packing Corporation

and

FOOD, TOBACCO, AGRICULTURAL & AL-
LIED WORKERS UNION OF AMERICA,
CIO.

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WARE-
HOUSEMEN AND HELPERS OF AMER-
ICA, AFL

Party to the Contract.

AFFIDAVIT OF SERVICE OF COMPLAINT
AND NOTICE OF HEARING

Date of Mailing, April 23, 1946

I, the undersigned employee of the National La-
bor Relations Board, being duly sworn, depose and
say that on the date indicated above I served the
above-entitled documents by postpaid registered

mail upon the following persons, addressed to them at the following addresses:

International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, A. F. of L., 846 South Union, Los Angeles, California. Att'n: Mr. Einar Mohn. Registry No. 915450, Date of delivery: 4/23/46.

California State Council of Cannery Unions, A. F. of L., 1916 Broadway, Oakland 12, California. Registry No. 915451. Date of delivery: 4/24/46.

Scientific Nutrition Corporation, d/b/a Capolino Packing Corporation, Atwater, California. Registry No. 915452. Date of delivery: 4/24/46.

Food, Tobacco, Agricultural & Allied Workers Union of America, CIO, 150 Golden Gate Avenue, San Francisco, California. Registry No. 915453. Date of delivery: 4/24/46.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL c/o Mr. Mathew O. Tobriner, 1035 Russ Building, San Francisco 4, California. Registry No. 915454. Date of delivery: 4/24/46.

/s/ CECILIA McMANMON,

Subscribed and sworn to before me this 7th day of May, 1946.

[Seal] /s/ ROSE C. CHAFFEE,
Designated Agent, National Labor Relations Board,
20th Region.

[Return Receipts, Registered Mail, as indicated above, attached.]

BOARD'S EXHIBIT 1c

United States of America Before the National
Labor Relations Board, Twentieth Region

Case No. 20-C-1422

In the Matter of

SCIENTIFIC NUTRITION CORPORATION,
d/b/a CAPOLINA PACKING CORPORATION,
and

FOOD, TOBACCO, AGRICULTURAL & AL-
LIED WORKERS UNION OF AMERICA,
CIO, and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WARE-
HOUSEMEN AND HELPERS OF AMER-
ICA, AFL,

Party to the Contract.

NOTICE OF POSTPONEMENT OF HEARING

Please Take Notice that the hearing in the above-entitled matter, heretofore set for the 7th day of May, 1946, has been postponed and will be conducted on May 14, 1946, at 10 o'clock in the forenoon in the Council Chamber of the City Hall, Merced, California.

Dated at San Francisco, California, this 27th day of April, 1946.

[Seal] /s/ JOSEPH E. WATSON,
Regional Director, National Labor Relations Board,
Twentieth Region.

BOARD'S EXHIBIT 1f

United States of America Before the National
Labor Relations Board, Twentieth Region

Case No. 20-C-1422

In the Matter of

SCIENTIFIC NUTRITION CORPORATION,
d/b/a CAPOLINA PACKING CORPORATION,

and

FOOD, TOBACCO, AGRICULTURAL & ALLIED
WORKERS UNION OF AMERICA,
CIO,

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA, AFL,

Party to the Contract.

AFFIDAVIT OF SERVICE OF NOTICE OF
POSTPONEMENT OF HEARING

Date of Mailing, April 27, 1946.

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-

entitled documents by postpaid registered mail upon the following persons, addressed to them at the following addresses:

International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, 846 South Union, Los Angeles, California. Att'n.: Mr. Einar Mohn. Registry No. 915481. Date of delivery: 4-29-46.

California State Council of Cannery Unions, AFL, 1916 Broadway, Oakland 12, California. Registry No. 915480. Date of delivery: 4-29-46.

Scientific Nutrition Corporation, d/b/a Capolino Packing Corporation, Atwater, California. Registry No. 915479. Date of delivery: 4-29-46.

Food, Tobacco, Agricultural & Allied Workers Union of America, CIO, 150 Golden Gate Avenue, San Francisco, California. Registry No. 915483. Date of delivery: 4-29-46.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, c/o Mr. Mathew O. Tobriner, 1035 Russ Building, San Francisco 4, California. Registry No. 915483. Date of delivery: 4-29-46.

/s/ BERNICE E. OLSON.

Subscribed and sworn to before me this 7th day of May, 1946.

[Seal] /s/ ROSE C. CHAFFEE,
Designated Agent, National Labor Relations Board,
20th Region.

[Return Receipts, Registered Mail attached.]

BOARD'S EXHIBIT No. 1g

United States of America Before the National
Labor Relations Board, Twentieth Region

Case No. 20-C-1422

In the Matter of

SCIENTIFIC NUTRITION CORPORATION,
d/b/a CAPOLINO PACKING CORPORATION,

and

FOOD, TOBACCO, AGRICULTURAL & ALLIED
WORKERS UNION OF AMERICA,
CIO,

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA, AFL,

Party to the Contract.

ANSWER OF SCIENTIFIC NUTRITION
CORPORATION, d/b/a CAPOLINO PACKING
CORPORATION

Comes now the above-named Scientific Nutrition Corporation, d/b/a Capolino Packing Corporation and answering the complaint on file in the above-entitled matter, admits, denies and alleges as follows:

I.

Admits the allegations of paragraphs I, II and VI of said complaint.

II.

Answering paragraph III of said complaint, denies each and every allegation therein contained and in this respect alleges that on May 18, 1945, this answering respondent entered into a written agreement, a copy of which it attached hereto and marked "Exhibit A"; further answering said paragraph III, this answering respondent alleges that for a period of time prior to March 1, 1946, it collected union dues from some of its employees.

III.

Denies generally and specifically each and every remaining allegations and conclusions set forth and contained in said complaint not otherwise hereinabove specifically answered.

Wherefore respondent prays that the complaint herein be dismissed and that all proceedings pursuant thereto be terminated.

SCIENTIFIC NUTRITION CORPORATION,
d/b/a CAPOLINO PACKING CORPORATION,

By /s/ JAMES R. AGEE,

Its Attorney.

EXHIBIT A

AGREEMENT

This Agreement made and entered into this 18 day of May, 1945, by and between the Scientific Nutrition Corporation, of Atwater, California, hereinafter designated as the Employer, and The Inter-

national Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Union of America, Affiliated With the American Federation of Labor, hereinafter designated as the Union, to become effective 5-18-1945.

Witnesseth: That in consideration of the premises it is mutually agreed as follows:

Section 1. That the Employer hereby agrees to recognize the Union as the sole collective bargaining agent for all the employees of the Employer covered by the master agreement between the California Processors and Growers, Inc., and the American Federation of Labor and the California State Council of Cannery Unions.

Section 2. The Employer agrees to place into effect any amendments to said master agreement which now are pending before the War Labor Board upon the War Labor Board approval.

In Witness Whereof, the parties hereto have set their hands and seals this 18 day of May, 1945.

Employer

SCIENTIFIC NUTRITION CORP.

By J. CAPOLINO.

Union

THE INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WARE-
HOUSEMEN AND HELPERS UNION OF
AMERICA,

By H. L. WOXBERG,

International Representative.

BOARD'S EXHIBIT No. 1h

United States of America Before the National Labor
Relations Board, Twentieth Region

Case No. 20-C-1422

In the Matter of

SCIENTIFIC NUTRITION CORPORATION,
d/b/a CAPOLINO PACKING CORPORATION,
and

FOOD, TOBACCO, AGRICULTURAL & AL-
LIED WORKERS UNION OF AMERICA,
CIO, and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WARE-
HOUSEMEN AND HELPERS OF AMER-
ICA, AFL, Party to the Contract.

ANSWER

Now comes International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, hereinafter referred to as AFL, and by way of answer to the Complaint on file herein, alleges as follows:

I.

Answering Paragraphs I, II and VI of said Complaint, admits the allegations thereof.

II.

Answering paragraph III of said Complaint, AFL admits that on or about May 18, 1945, respondent entered into a contract with AFL, as alleged in said Complaint, and that respondent has thereafter

enforced and given effect to said contract, but AFL denies each and all of the other allegations of said paragraph.

III.

Answering paragraphs IV, V, VII, both paragraphs numbered VIII and paragraph XI, AFL denies each and every allegation of each and every of said paragraphs.

Wherefore, AFL prays that the Complaint be dismissed.

TOBRINER & LAZARUS,
By /s/ MATHEW O. TOBRINER,
Attorneys for AFL.

State of California,
City and County of San Francisco—ss.

Einar O. Mohn, being first duly sworn, deposes and says:

That he is the International Representative of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and as such makes this verification on its behalf; that he has read the foregoing Answer and knows the contents thereof; that the same is true of his own knowledge except as to those matters which are therein stated on information or belief, and as to those matters that he believes it to be true.

/s/ EINAR O. MOHN.

Subscribed and sworn to before me this 13th day of May, 1946.

[Seal] /s/ ALFRED I. MARTIN,
Notary Public in and for the City and County of
San Francisco, State of California.

BOARD'S EXHIBIT No. 1i

United States of America Before the National Labor
Relations Board, Twentieth Region

Case No. 20-C-1422

In the Matter of

SCIENTIFIC NUTRITION CORPORATION,
d/b/a CAPOLINO PACKING CORPORA-
TION,

and

FOOD, TOBACCO, AGRICULTURAL & AL-
LIED WORKERS UNION OF AMERICA,
CIO,

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WARE-
HOUSEMEN AND HELPERS OF AMER-
ICA, AFL,

Party to the Contract.

MOTION TO DISMISS

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, hereinafter referred to as AFL, party to the contract herein, hereby appears specially herein for the purpose of this motion and not otherwise,

and hereby makes and files this Motion to Dismiss upon the following grounds:

I.

The National Labor Relations Board, on or about February 15, 1946, having already "provided" that the respondent company is without right to bargain and contract with the AFL, has, by such pronouncement prejudged the present case before trial and is therefore not the proper tribunal before which the matters presented by the Complaint herein should be tried. Such "ruling" was made without any prior notice to the parties that the Board would make any determination of the right of the parties to engage in exclusive collective bargaining. No hearing was held upon said subject matter. No evidence was taken on such subject matter. No charges were filed or complaint issued on such subject matter. The Board attempted to determine such right *ex cathedra* and *ex parte*, in violation of the provisions of the National Labor Relations Act. By said unlawful acts the Board has prejudged the instant matter, rendered itself unable to decide said matter impartially, and this Complaint should therefore be dismissed.

As and for a Second and Separate and Independent Ground for Said Motion to Dismiss, Said AFL Alleges:

I.

In the event that the Supplemental Decision of February 15, 1946, did not "order" said AFL not to bargain exclusively with respondent, or in the event that the National Labor Relations Board lacked jurisdiction to provide in said Supplemental

Decision that said AFL should not bargain exclusively with said company, the within Complaint should be dismissed on the ground that it does not state a cause of action. Unless and until a new bargaining agency is chosen, respondent company is not only permitted but obligated to bargain with and recognize the AFL as the existing bargaining representative of its employees.

Wherefore, AFL moves that the within Complaint be dismissed.

TOBRINER & LAZARUS,
By /s/ MATHEW O. TOBRINER,
Attorneys for AFL.

United States of America Before the National Labor
Relations Board

Case No. 20-C-1422

In the Matter of

SCIENTIFIC NUTRITION CORPORATION,
d/b/a CAPOLINO PACKING CORPORATION,

and

FOOD, TOBACCO, AGRICULTURAL AND AL-
LIED WORKERS UNION OF AMERICA,
CIO,

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WARE-
HOUSEMEN AND HELPERS OF AMER-
ICA, AFL,

Party to the Contract.

AFL'S EXCEPTIONS TO INTERMEDIATE
REPORT

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, hereby excepts to the Intermediate Report of the Trial Examiner in the above-entitled proceeding, as follows:

I.

Findings of Fact Excepted To

“According to Gus Cedar, a boilerman in the respondent's employ,⁴ J. Capolino told the employees that the respondent had been notified by the Teamsters that that Union was ‘going to take over the

plant,' and that there was nothing that the employees could do. He said further that if they did not join the Teamsters, that Union would stop deliveries to the plant, causing a cessation of operations and the resultant loss of employment. Cedar then asked J. Capolino to allow the employees sufficient time to contact Local 22382 in Modesto, California, so that they could 'find out what it was all about.'⁵"

"⁵ In essential details McIsaac corroborated Cedar's testimony. He did not specifically deny that J. Capolino told the employees that if they did not join the Teamsters, deliveries would stop. He admitted that J. Capolino, after advising the employees of the substance of the May 8, letter from the Teamsters said that he 'was afraid this was going to lead to a lot of trouble and possibly shut the plant down' but then told them he was not interested in their union affiliation so long as there was peace among the employees and the plant could continue to operate. The undersigned credits Cedar's testimony." (Emphasis supplied) (p. 4)

"* * * the respondent not only urged its employees to join the Teamsters and warned them of the possible shutdown of the plant if they did not join, but also granted the Teamsters the use of its time and property for the purpose of soliciting memberships and threatening employees with the loss of their jobs if they refused to become members of the Teamsters." (p. 7)

"* * * By granting such aid and assistance to the Teamsters, the respondent illegally participated in the selection of the bargaining representative of

its employees and is not entitled to rely, as proof of the Teamsters' majority for the purpose of recognition, upon the designation to the completion of which it had illegally contributed." (p. 8)

"Upon the record as a whole the undersigned is convinced and finds that the respondent urged and warned its employees to become members of the Teamsters, and granted the use of its time and property to representatives of the Teamsters for the purpose of addressing and soliciting its employees thereby lending support to the Teamsters and assisting it in obtaining a majority of members among the respondent's employees." (p. 9)

II.

Conclusion of Law Excepted To

"3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act." (p. 12)

III.

Proposed Remedies Excepted To

That the respondent shall:

"1. Cease and desist from:

(a) Recognizing International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, as the exclusive representative of its employees for the purposes of collective bargaining unless and until said organization shall be certified by the National Labor Relations Board as

the exclusive representative of such employees;" (p. 12)

"(c) Withhold all recognition from International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, as the exclusive representative of its employees for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment unless and until said organization shall have been certified by the National Labor Relations Board as the representative of such employees;" (p. 13)

IV.

Portion of Proposed Notice Excepted To

"We Will Not recognize International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, as the exclusive representative of our employees for the purposes of collective bargaining, unless and until said organization shall be certified by the National Labor Relations Board as the exclusive representative of such employees.

"We Will Not in any manner encourage membership in International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, or any other labor organization, by yielding to pressure from that or any other labor organization or other pressure." (Appendix A)

Respectfully submitted,

TOBRINER & LAZARUS,

By /s/ MATHEW O. TOBRINER,

Attorneys for AFL.

United States of America Before the National
Labor Relations Board

Case No. 20-C-1422

In the Matter of

SCIENTIFIC NUTRITION CORPORATION,
d/b/a CAPOLINO PACKING CORPORATION,

and

FOOD, TOBACCO, AGRICULTURAL AND ALLIED
WORKERS UNION OF AMERICA,
CIO,

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA, AFL,

Party to the Contract.

Mr. Robert Tillman, for the Board.

Messrs. James R. Agee and J. Paul St. Sure, of
Oakland, Calif., for the respondent.

Tobriner and Lazarus, by Mr. Mathew Tobrin-
ner, of San Francisco, Calif., for the Teamsters.

Mr. Warren C. Horie, of Merced, Calif., and Mr.
M. Wolf, of New York City, for the CIO.

Mr. Samuel M. Kaynard, of counsel to the Board.

DECISION AND ORDER

On June 20, 1946, Trial Examiner Sidney Lindner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices and recommending that the respondent cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Teamsters filed exceptions to the Intermediate Report and a supporting brief; the respondent filed no exceptions. On October 1, 1946, the Board at Washington, D. C., heard oral argument, in which the respondent, the Teamsters, and the CIO participated.

The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following exceptions and modifications.

1. The Trial Examiner found, and we agree, that the respondent engaged in conduct violative of Section 8 (1) of the Act. In so agreeing, however, we, unlike the Trial Examiner, do not pass upon the

Teamsters' contention that, by virtue of an award of jurisdiction over the cannery workers by the Executive Council of the American Federation of Labor, the Teamsters became the legal successor to Local 22382, and thereby inherited its then outstanding contract with the respondent and its exclusive representative status. It is our opinion, and we find, that regardless of the status of the Teamsters, either as a successor to the bargaining representative or as a newly chosen representative of the employees, a matter upon which we deem it unnecessary to pass, the respondent's conduct was violative of the Act. As set forth in the Intermediate Report, the respondent warned its employees that they faced a plant shutdown and resultant unemployment unless they joined the Teamsters, and otherwise assisted the Teamsters in recruiting new members. In the absence of a valid existing closed-shop agreement, such encouragement of membership in the Teamsters by the respondent is prohibited by the Act, even though the Teamsters may have then represented a majority of the employees.¹

We find, as did the Trial Examiner, that neither Local 22382 nor the Teamsters had a closed-shop agreement with the respondent.²

¹N. L. R. B. v. Electric Vacuum Cleaner Co., 315 U. S. 685, reversing 120 F. 2d 611 (C. C. A. 6), setting aside 18 N. L. R. B. 591; N. L. R. B. v. John Englehorn & Sons, 134 F. 2d 553 (C. C. A. 3), enforcing 42 N. L. R. B. 866.

²Matter of G. W. Hume and California Processors & Growers, Inc., 71 N. L. R. B., No. 81.

2. The Trial Examiner found that the discharge of Gus Cedar for refusing to join the Teamsters was violative of Section 8 (3) of the Act. No exceptions were filed to this finding, and we agree with the Trial Examiner insofar as his conclusion is based on his subsidiary finding that the Master Agreement, upon which the respondent relies, was not a closed-shop contract³ and therefore gave no justification for the discharge of Gus Cedar.

3. The Trial Examiner, having found that "the respondent assisted the Teamsters in obtaining a majority of members among the respondent's employees," and that the contract of May 18, 1945, was therefore illegal, recommended that the respondent be required to refrain from recognizing the Teamsters as the exclusive bargaining representative of its employees unless and until the Teamsters is duly certified as such representative by the Board. Our disposition of the issues herein makes it unnecessary for us to pass upon the validity of the 1945 contract; and, inasmuch as that contract expired on March 1, 1946, and there has since been no collective bargaining between the respondent and the Team-

³The contention that the parties understood and administered the contract as requiring membership in the Teamsters, is not supported by the evidence. See Matter of G. W. Hume and California Processors & Growers, Inc., 71 N. L. R. B., No. 81.

sters, we see no need for including the Trial Examiner's recommendation in our Order.⁴

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Scientific Nutrition Corporation, d/b/a Capolino Packing Corporation, Atwater, California, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Encouraging membership in International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, or any other labor organization of its employees, by discharging and refusing to reinstate any of its employees, or by discriminating in any other manner in regard

⁴However, it should be noted that in the Bercut-Richards representation proceedings (65 N. L. R. B. 1052, 1057) the Board advised the employers that they "may not, pending a new election, give preferential treatment to any of the labor organizations involved * * *". Moreover, in recent complaint proceedings before the Board, involving similar cannery plants and cannery workers, we have held that the execution of an exclusive bargaining contract, in the face of a pending question concerning representation, constituted a violation of Section 8 (1) of the Act. Matter of Flotill Products, Inc., 70 N. L. R. B., No. 12; Matter of Lincoln Packing Co., 70 N. L. R. B., No. 13. It need only be added that the respondent herein is a party to the representation proceedings still pending before the Board in Matter of Bercut-Richards et al., (64 N. L. R. B. 133, 65 N. L. R. B. 1052).

to their hire or tenure of employment, or any term or condition of their employment.

(b) In any other manner encouraging or coercing its employees to become or remain members of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, or any other labor organization, whether or not because of pressure from that or any other labor organization, or because of other economic considerations.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer to Gus Cedar immediate and full reinstatement to his former or a substantially equivalent position, without prejudice to his seniority or other rights and privileges:

(b) Make whole Gus Cedar for any loss of pay he may have suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to the amount that he normally would have earned as wages during the period from June 22, 1945, the date of his discharge, to the date of the respondent's offer of reinstatement, less his net earnings during said period;

(c) Post at its plant at Atwater, California, copies of the notice attached hereto, marked "Appendix A."⁵ Copies of said notice, to be furnished by the

⁵In the event that this order is enforced by a decree of a Circuit Court of Appeals, there shall be inserted before the words "A Decision and Order," the words: "A Decree of the United States Circuit Court of Appeals Enforcing."

Regional Director for the Twentieth Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material:

(d) Notify the Regional Director for the Twentieth Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

Signed at Washington, D. C., this 13th day of December, 1946.

[Seal]

PAUL M. HERZOG,
Chairman.

JOHN M. HOUSTON,
Member, National Labor
Relations Board.

APPENDIX A

Notice to All Employees

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not in any manner encourage or coerce our employees to become or remain mem-

bers of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, or any other labor organization, whether or not because of pressure from that or any other labor organization, or because of other economic considerations.

We Will Offer to Gus Cedar immediate and full reinstatement to his former or a substantially equivalent position, without prejudice to any seniority or other rights and privileges enjoyed, and make him whole for any loss of pay suffered as a result of the discrimination.

All our employees are free to become or remain members of any labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

SCIENTIFIC NUTRITION
CORPORATION,

Employer.

Dated.....

By,
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

United States of America Before the National
Labor Relations Board, Trial Examining Division,
Washington, D. C.

Case No. 20-C-1422

In the Matter of

SCIENTIFIC NUTRITION CORPORATION,
d/b/a CAPOLINO PACKING CORPORATION,

and

FOOD, TOBACCO, AGRICULTURAL AND
ALLIED WORKERS UNION OF AMERICA, CIO,

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA, AFL,

Party to the Contract.

Mr. Robert E. Tillman, for the Board.

Mr. James R. Agee, of Oakland, Calif., for the
respondent.

Tobriner and Lazarus, by Mr. Mathew Tobriner,
of San Francisco, Calif., for the AFL.

Mr. Warren G. Horie, of Merced, Calif., for the
CIO.

INTERMEDIATE REPORT

Statement of the Case

Upon a third amended charge duly filed by the Food, Tobacco, Agricultural and Allied Workers Union of America, CIO, herein called the CIO, the National Labor Relations Board, herein called the Board, by its Regional Director for the Twentieth Region, (San Francisco, California), issued its complaint dated April 23, 1946, against Scientific Nutrition Corporation, d/b/a Capolino Packing Corporation, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3), and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint and notice of hearing were duly served upon the respondent, CIO, California State Council of Cannery Unions, AFL, and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, herein called the Teamsters, party to the contract.

With respect to the unfair labor practices, the complaint alleged in substance that the respondent: (1) urged, persuaded, threatened, and warned its employees to become members of the Teamsters, granted access to representatives of the Teamsters, assisting it in obtaining a majority of members among the respondent's employees, and entered into a contract with the Teamsters which is alleged to be illegal because of the aforesaid acts; (2) on or

about June 22, 1945, discharged its employee Gus Cedar because he refused to join the Teamsters and has at all times thereafter refused to reinstate him; and (3) because of all the alleged acts set forth above has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act.

Thereafter, the respondent and the Teamsters filed answers denying the commission of any unfair labor practices.

Pursuant to notice, a hearing was held in Merced, California, on May 14, 1946, before the undersigned, Sidney Lindner, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondent, the Teamsters were represented by counsel, and the CIO by a lay representative and participated in the hearing. The parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the opening of the hearing counsel for the Teamsters moved to dismiss the complaint in its entirety on the grounds that (1) the Board on or about February 15, 1946, having already "provided" that the respondent is without right to bargain and contract with the AFL, has, by such pronouncement, prejudged the present case, and is therefore not the proper tribunal before which the matters presented by the complaint herein should be tried, and (2) the complaint does not state a cause of action. The motion was denied by the undersigned. At the conclusion of the hearing all

parties engaged in oral argument and were granted leave to file briefs on or before May 24, 1946, with the undersigned. No briefs have been received.

Upon the record in the case and from his observation of the witnesses, the undersigned makes the following:

Findings of Fact

I. The Business of the Respondent

The Scientific Nutrition Corporation is a New York corporation, having its principal office in New York City. It operates plants at Atwater, California, and at Colon, Cuba, where it is engaged in the business of canning and processing fruits and vegetables. At its Atwater, California, plant, the only plant involved in this proceeding, the respondent is engaged in business as the Capolino Packing Corporation. The annual sales of products from the respondent's Atwater plant total approximately \$1,500,000, of which approximately 90 per cent represents the amount of sales of products which are shipped from the plant to points outside the State of California. The respondent admits that it is engaged in commerce within the meaning of the Act.

II. The Organizations Involved

Food, Tobacco, Agricultural and Allied Workers Union of America, CIO, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and California State Council of Cannery Unions, AFL, and its constituent unions,

one of which is Local 22382, are labor organizations admitting to membership employees of the respondent.

III. The Unfair Labor Practices

A. Events Leading Up to the Contract With the Teamsters

In 1941, Cannery Workers Union Local 22382, a Federal Local Union of the American Federation of Labor, herein referred to as Local 22382, entered into a collective bargaining contract with the Capolino Packing Corporation herein referred to as Capolino. By the terms of this contract the parties thereto adopted and agreed to be bound by the Master Agreement¹ previously executed by and between California Processors and Growers, Inc., herein referred to as the Association, and the American Federation of Labor, and California State Council of Cannery Unions, although Capolino was not a member of the Association. Subsequent to 1941, the parties did not enter into any new written contracts, but continued to maintain the same contractual status agreed upon in 1941.

Shortly after January 1, 1945, J. Capolino, the then manager of the Capolino plant, notified Local 22382, by letter, that Scientific Nutrition Corporation, herein referred to as the respondent, had taken over full control and ownership of the plant²

¹Also referred to in the record as the C. P. & G. contract and the "green book agreement."

²Capolino Packing Corporation was sold to Scientific Nutrition Corporation whose main office is in New York City, in the early part of 1944.

and that collective bargaining contracts in the future would have to be signed by an official of the New York office, until such time as J. Capolino was authorized to do so himself. The respondent continued to recognize Local 22382 as the exclusive bargaining representative of its employees under the same terms and conditions as theretofore.

On or about May 8, 1945, the respondent received a written communication from the Teamsters as follows:

Scientific Nutrition Corporation
Atwater, California

Attention Mr. Joseph Capolino

Gentlemen:

The following is the action of the Executive Council of the American Federation of Labor in a meeting held in Washington, D. C., on May 3rd, 1945.

“The following is the award of the Executive Council—it is the sense of this Council meeting that the interests of the American Federation of Labor would be protected and preserved in the canning industry in California, Washington, and Oregon by the transfer of the federal labor unions in that field to the Teamsters International Union and that the officers of the Federation be directed to cooperate with the Teamsters International Union in bringing about this result, and that the AFL cooperate in helping to organize the unorganized in this field.”

By the above action the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Union of America inherit the agreement now in effect between your company and the American Federation of Labor and the Local Cannery Workers Union.

The International Brotherhood of Teamsters wish to advise you that we expect your company to immediately recognize only the Teamsters International Union as the representatives of your employees and in return the Teamsters International Union will live up to the agreement now in effect to the letter.

Would appreciate an answer by return mail, your position in this matter.

Yours truly,

/s/ H. L. WOXBERG,

International Representative.

By letter dated May 11, 1945, which the respondent admitted receiving, the Cannery and Food Process Workers' Council of the Pacific Coast, advised the respondent that the transfer of Local 22382 membership to the Teamsters by the Executive Council of the American Federation of Labor was made without regard to the wishes of the members. That as a result, the employees terminated their membership in Local 22382 and organized under the name of Cannery Food Process Workers Union of Modesto Area and had received a charter from the Cannery and Food Process Workers' Council of the

Pacific Coast. Further, that the Cannery and Food Process Workers Union of Modesto Area represented all of the respondent's employees except supervisors in collective bargaining matters and indicated a willingness to meet with the respondent. This letter was apparently never answered by the respondent.

On the Monday following the receipt of the above letters, the employees were assembled in the warehouse of the plant during working hours, where they were addressed by J. Capolino.³ Present also were Eugene McIsaac, plant superintendent, and in charge of labor relations, Stewart, assistant plant superintendent; Spafford, foreman of the warehouse, and White, assistant manager.

According to Gus Cedar, a boilerman in the respondent's employ,⁴ J. Capolino told the employees that the respondent had been notified by the Teamsters that the Union was "going to take over the plant," and that there was nothing that the employees could do. He said further that if they did not join the Teamsters, that Union would stop deliveries to the plant, causing a cessation of operations and the resultant loss of employment. Cedar then asked J. Capolino to allow the employees sufficient

³The record reveals that the plant was not engaged in canning at this time and only the regular employees, of whom there were 26, attended the meeting.

⁴The discharge of Cedar will be discussed hereinafter.

time to contact Local 22382 in Modesto, California, so that they could "find out what it was all about."⁵

About 2 hours after the above-described meeting,⁶ a group of five representatives of the Teamsters which included King, Torreano, Brown, and two unidentified men, called at the plant office and asked J. Capolino and McIsaac what their intentions were with respect to the May 8 letter. They were informed that until such time as the employees designated the Teamsters to represent them, the respondent did not intend to do anything; that the choice of a union remained with the employees. The Teamsters' representatives then requested the respondent's permission to talk to the employees, which was granted.

McIsaac instructed the employees to gather again in the warehouse. When they were all assembled, McIsaac informed them that the representatives of the Teamsters wanted to talk to them. King introduced himself,⁷ and told the employees that he was

⁵In essential details McIsaac corroborated Cedar's testimony. He did not specifically deny that J. Capolino told the employees that if they did not join the Teamsters, deliveries would stop. He admitted that J. Capolino, after advising the employees of the substance of the May 8 letter from the Teamsters, said that he "was afraid this was going to lead to a lot of trouble and possibly shut the plant down," but then told them he was not interested in their union affiliation so long as there was peace among the employees and the plant could continue to operate. The undersigned credits Cedar's testimony.

⁶The first meeting took place at 8:30 a.m.

⁷King was known to the employees as he formerly had been an official of Local 22382.

now working for the Teamsters, and stated his reasons for changing his affiliation to that Union. He also outlined the benefits the employees would gain by affiliation with the Teamsters. According to the undenied testimony of Cedar which the undersigned credits, King then asked the employees when they were going to sign up with the Teamsters. Torreano also spoke along similar lines. McIsaac was present while King and Torreano spoke to the employees. After the meeting and while the employees were still in the warehouse, the Teamsters representatives went among the employees and solicited each one individually. That same afternoon the Teamsters presented signed membership applications of 13 of the employees to the respondent and demanded that a contract be signed. The respondent refused to sign stating that the Teamsters did not show a majority. About 2 or 3 days later the Teamsters returned to the plant with 3 or 4 additional signed membership applications. The respondent checked all the signatures to determine their validity and on May 18, signed the following contract with the Teamsters:

Agreement

This Agreement made and entered into this 18 day of May, 1945, by and between the Scientific Nutrition Corporation, of Atwater, California, hereinafter designated as the Employer and The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Union of America,

Affiliated with The American Federation of Labor, hereinafter designated as the Union, to become effective 5/18/1945.

Witnesseth: That in consideration of the premises it is mutually agreed as follows:

Section 1. That the Employer hereby agrees to recognize the Union as the sole collective bargaining agent for all the employees of the Employer covered by the master agreement between the California Processors and Growers, Inc., and the American Federation of Labor and the California State Council of Cannery Unions.

Section 2. The Employer agrees to place into effect any amendments to said master agreement which now are pending before the War Labor Board upon the War Labor Board approval.

In Witness Whereof, the parties hereto have set their hands and seals of this 18 day of May, 1945.

THE INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WARE-
HOUSEMEN AND HELPERS UNION OF
AMERICA,

By H. L. WOXBERG,

International Representative,
Union.

SCIENTIFIC NUTRITION CORP.,

By J. CAPOLINO,

Employer.

After it had signed the above contract, the re-

spondent called another meeting of its employees in the plant during working hours. McIsaac notified them that a majority had signed membership applications in the Teamsters; that the respondent had signed a contract with the Teamsters, and that henceforth it would be bound by such contract. McIsaac, according to Cedar's undenied testimony which the undersigned credits, also told the employees that "it was too late now to do anything about it."

McIsaac admitted that the respondent never showed the employees a copy of the contract it had signed with the Teamsters, nor did it post the same or any notice to that effect. However, shortly after the contract was signed, King, Torreano, and Brown were again granted permission by the respondent to talk to the employees during a rest period, and at this time according to McIsaac the employees were shown the signed contract by the Teamsters' representatives. It was on this occasion, according to Cedar's undenied testimony which the undersigned credits, that King remarked that a few of the employees had not yet signed up with the Teamsters and warned, "If you boys don't sign up, you will be all sitting out in the park because this plant is going to be closed."

B. The discriminatory discharge of Gus Cedar

On June 22, 1945, the respondent discharged Gus Cedar under the following circumstances:

In June 1944, Cedar was hired by the respondent

and given "regular" employment as a boiler room operator. Cedar was a member of Local 22382 since November 1940 and continued his membership in good standing in that union during his entire period of employment with the respondent.

Cedar testified that the membership of Local 22382 never discussed affiliation with the Teamsters, and that he first learned of the award of jurisdiction of the cannery workers to the Teamsters at the meeting of the respondent's employees called by J. Capolino on or about May 14, 1945, described above.

As found heretofore the Teamsters representatives were granted permission by the respondent to solicit its employees in the plant during working hours. Cedar's uncontradicted testimony is that he was solicited to join the Teamsters by King and Torreano when they were in the plant the first time. On the second occasion when the Teamsters solicited the respondent's employees, Torreano wanted to know what Cedar was going to do about joining the Teamsters, Cedar replied, "not anything about it right now," and Torreano said, "Well, either sign up or else. You know, out you go."

About the latter part of May, 1945, while Cedar was in McIsaac's office, the latter asked him whether he had made up his mind about joining the Teamsters. When Cedar replied that he had not, McIsaac

said that the Teamsters were making demands on the respondent to fire Cedar, and that he was causing the respondent to let him go.

During the second week of June, 1945, according to Cedar's testimony, J. Capolino talked to him about a leaflet that had been distributed in the plant by another union.⁸ Cedar was accused by J. Capolino, according to the former, of participating in the distribution of the leaflets and was told that if he wanted to work for the respondent he would have to join the Teamsters.⁹

On June 22, 1945, according to Cedar's undenied testimony which the undersigned credits, while he was working in the boiler room, Torreano and another Teamsters representative in the presence of McIsaac, asked Cedar what his intentions were with respect to joining the Teamsters. Cedar replied that he was not going to become a member of the Teamsters, whereupon Torreano told him that he was fired and to report to the office for his time. McIsaac

⁸The record reveals that Local 22382 met in June 1945, and made efforts to affiliate with the Seafarers International Union without success. It was this union that purportedly distributed the leaflets.

⁹J. Capolino died in November 1945. Cedar's testimony regarding this incident with J. Capolino was received in evidence over the objections of counsel for the respondent and the Teamsters but has not been used by the undersigned for the purpose of basing a finding thereon.

told Cedar he would have to get another man.¹⁰ Cedar reported at the office at about 12 noon where he was given a termination notice which set forth the reason for discharge as "Refusal to join Union (AF of L) Teamsters." Cedar has not worked for the respondent since that time.

C. Concluding Findings

1. With respect to the contract with the Teamsters

Counsel for the respondent and for the Teamsters argue that the respondent was required as a matter

¹⁰McIsaac did not deny Cedar's testimony. He testified that he discharged Cedar in accordance with the written demand of the Teamsters as follows:

Cannery Warehousemen, Food Processors, Drivers and Helpers, Local 748, 602 Tenth Street, Modesto, California.

June 22, 1945.

Scientific Nutrition Corporation,
Atwater, California

Attention: Mr. McIsaac

Dear Sir:

In accordance with the terms of the agreement between your company and Local 748 this letter will serve as a notice to your company to terminate the employment of Gus Sedar. (sic)

This man has refused to become a member of this union and under the terms of our contract he is subject to dismissal. We have given Gus Sedar (sic) (30) days in which to make up his mind about joining this Local, which is (20) days more than the time stipulated in the contract. Therefore we ask his immediate dismissal upon receipt of this letter.

Very truly yours.

[Seal] /s/ H. C. TORREANO,
Representative.

HCT:BG

of law to deal with the Teamsters as the exclusive bargaining representative of its employees since the Teamsters had proved that it represented a majority of the employees. As found heretofore, the respondent not only urged its employees to join the Teamsters and warned them of the possible shut down of the plant if they did not join, but also granted the Teamsters the use of its time and property for the purpose of soliciting memberships and threatening employees with the loss of their jobs if they refused to become members of the Teamsters. While it may well be that the respondent was motivated in its actions by the fear of economic hardship, nevertheless, it is well established that "the Act prohibits unfair labor practices in all cases. It permits no immunity because the employer may think that the exigencies of the moment require infraction of the statute. In fact nothing in the statute permits or justifies its violation by the employer."¹¹ By granting such aid and assistance to the Teamsters, the respondent illegally participated in the selection of the bargaining representative of its employees and is not entitled to rely, as proof of the Teamsters' majority for the purpose of recognition, upon the designation to the completion of which it had illegally contributed. Furthermore, even if it is assumed arguendo, that the respondent's illegal conduct did not influence a majority of its employees

¹¹N. L. R. B. v. Star Publishing Co., 97 F. (2d) 465 (C. C. A. 9), enforcing 4 N.L.R.B. 498.

in casting their lot with the Teamsters, an employer may not, in the absence of a valid existing contract requiring membership in a labor organization as a condition of employment, cooperate with a labor organization, though it represents an uncoerced majority of the employees, to secure for its new members.¹²

Counsel for the respondent and for the Teamsters also raised the contention in oral argument that as a result of the award of jurisdiction of the cannery workers to the Teamsters by the American Federation of Labor, the Teamsters succeeded to the position that Local 22382 had formerly occupied insofar as the respondent was concerned. It appears clear from the record that in May, 1945, when the respondent was notified of the award of jurisdiction over its employees to the Teamsters, it refused to subscribe to the "successorship theory" but rather insisted that the Teamsters prove that it represented a majority of the employees before it would enter into a contract and grant recognition to the Teamsters as exclusive bargaining representative of its employees. The respondent no doubt was motivated by the factual situation then confronting it for it had already received notice that the Cannery and Food Process Workers Council of the Pacific Coast claimed to represent a majority of its em-

¹²N. L. R. B. v. John Englehorn & Sons, 134 F. (2d) 533 (C. C. A. 3) enf'g 42 N.L.R.B. 886; see also N.L.R.B. v. Electric Vacuum Cleaner Co., 315 U. S. 685 reversing 120 F. (2d) 611 (C. C. A. 6) setting aside 18 N.L.R.B. 591.

ployees made up of former members of Local 22382, who were opposed to affiliating with the Teamsters.

The Teamsters too recognized the validity of the respondent's claim that it was not entitled to inherit Local 22382's contract without proof of a majority showing, for it attempted to obtain the allegiance of a majority of the employees. This is borne out by the new agreement of May 18, 1945, made by and between the Teamsters and the respondent, evidently superseding the old contract with Local 22382.¹³ It thus appears that both the Teamsters and the respondent abandoned the "successorship theory" and relied on the majority theory as a condition precedent to the making of a new contract. However, even if it be argued that the May 18, 1945, contract was merely a substitution of the name of the Teamsters for that of Local 22382 on the "successorship theory," such a contract, under the facts here presented, would not be valid unless the Teamsters represented an uncoerced majority at the time. While the undersigned does not mean to suggest that a mere change in name or affiliation of a union deprives it of its status as exclusive bargaining representative, nevertheless, the facts herein disclose sufficient doubt, recognized by the parties themselves, that the succeeding union had retained the old union's status as the representative of the majority of the employees in the appropriate unit. The

¹³Local 22382 was composed of employees of various canneries located in the same geographic area as the respondent.

choice of a collective bargaining representative under the Act is inherent in the employees and neither the employees nor the Board are necessarily bound by an award of a labor organization.¹⁴ Furthermore, the record is clear that at least some of the employees, if not a majority,¹⁵ did not desire the Teamsters to represent them as collective bargaining agent. The undersigned finds this contention without merit.

Counsel for the Teamsters raised the further contention that when the Board in its original Decision in the Matter of Bercut-Richards Packing Company et al,¹⁶ said “. . . Upon the facts in the present record, we shall assume the validity of the extended agreement hereinabove referred to . . .”, it recognized the validity of the May, 1945, contract between the respondent and the Teamsters. Further, that the Board again recognize the validity of this very contract which is now the subject of attack when in its Supplemental Decision in the Matter of Bercut-Richards Packing Company et al,¹⁷ it said “. . . In this state of the record, no legal effect may be given the closed-shop provision contained in the current collective agreements after their expiration

¹⁴See Matter of Albert Love Enterprises, doing business as Foote & Davies, 66 N. L. R. B. 416; Matter of Fuld and Hatch Knitting Co., 67 N. L. R. B. No. 133.

¹⁵As found above, the assistance of the respondent resulted in the Teamsters obtaining a majority.

¹⁶64 N. L. R. B. 133, issued October 12, 1945.

¹⁷65 N. L. R. B. 1052 issued February 15, 1946.

date; . . .” The language of the Board carries no such import. The Board in the Matter of Bercut-Richards Company et al, was not confronted with the problem of determining the validity of the contract between the respondent and the Teamsters, as it is here. It is the Board’s general practice in representation cases to presume the regularity and legality of a collective bargaining contract and to refuse to admit evidence in such hearings on the question of whether or not a majority of employees covered by such a contract had actually designated the contracting union as their representative at the time the contract was made.¹⁸ The contention is without merit.

Upon the record as a whole the undersigned is convinced and finds that the respondent urged and warned its employees to become members of the Teamsters, and granted the use of its time and property to representatives of the Teamsters for the purpose of addressing and soliciting its employees thereby lending support to the Teamsters and assisting it in obtaining a majority of members among the respondent’s employees.

The undersigned further finds that the contract of May 18, 1945, was entered into under circumstances prohibited by the Act and that thereby the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

¹⁸See Matter of the Lamson Brothers Company, 59 N. L. R. B. 1561; Matter of United States Rubber Company, 62 N. L. R. B. 795.

2. With respect to the discharge of Gus Cedar

The complaint alleges that the respondent discharged its employee, Gus Cedar on June 22, 1945, and thereafter refused to reinstate him, because the said employee refused to join the Teamsters.

While admitting these facts, the respondent maintains that it discharged Cedar at the request of the Teamsters, in conformance with a valid closed-shop contract.

Assuming, without conceding, that the contract between the respondent and the Teamsters contained a closed-shop provision, nevertheless, the proviso to Section 8 (3) of the Act permits discharge of an employee pursuant to the terms of a closed-shop contract only where the contract was made with a labor organization which was not established, maintained, or assisted by any unfair labor practice and which was the representative of a majority of the employees in an appropriate unit covered by the contract when made. As found in the prior section of this report, the respondent assisted the Teamsters in obtaining a majority of members among the respondent's employees, and entered into the May 18, 1945, contract under circumstances prohibited by the Act. Therefore, the respondent's contract with the Teamsters did not meet the conditions of the proviso, and in discharging Cedar, the proviso afforded no protection to the respondent.

Even assuming *arguendo* the validity of its contract with the Teamsters, since this contract incorporated the Master Agreement by reference, it is

necessary to look to the Master Agreement to determine if by its terms it is a closed-shop contract in order to sustain the respondent's defense in its discharge of Cedar.

As noted heretofore, Cedar was a "regular" employee who maintained his membership in good standing in Local 22382 during his entire period of employment with the respondent. The Master Agreement clearly exempts employees on the seniority list¹⁹ from being required to obtain clearance slips as a condition for going to work from season to season and is silent as to the "regular" or year round employees. The most it does with reference to the employees on the seniority list is to require the employer to report to the local union, from time to time, the names of those in its employ who did not produce clearance slips on their resumption of work. This part of the agreement contains no language that can be construed to mean that any employee on the seniority list may not be put to work without a union clearance or that he must be a member in good standing or a member at all, to qualify for employment. Nor is there any provision in the Master Agreement that requires an employee who has joined a local union to maintain his membership in good standing as a condition of employment. The sole requirement that the Master Agree-

¹⁹The seniority list included "regular" and seasonal employee, i. e., those other than regular employees who worked in a given plant at least 60 per cent of the total number of operating days of said plant during the previous season.

ment imposes upon the employer in this respect is to see that "new employees," as distinguished from employees on the seniority list, file applications for membership in the appropriate local union when they go to work and to notify the new employees that, under the Master Agreement, they must complete their application with the local union within 10 days. The employer's responsibility for the new employees' affiliation ends upon the making of such applications by them and the giving of such notices. The local union expressly assumes, under the terms of the Master Agreement, full responsibility for the new employees's affiliation with it from that point forward. The Master Agreement is likewise silent as to the obligations of the new employee to the local union after his application has been made at the time of his employment, except that within 10 days thereafter he must become a member. It imposes no other obligations with respect to the employee's tenure of employment. At best, the Master Agreement in the opinion of the undersigned, is no more than a preferential hiring contract.

The undersigned finds that the respondent by discharging Cedar, discriminated in regard to his hire and tenure of employment, thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. The Affect of the Unfair Labor Practices Upon Commerce

The activities of the respondent set forth in Section III above, occurring in connection with the

operations of the respondent, described in Section I above, have a close, intimate, and substantial relation to trade, traffic and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that the respondent has engaged in unfair labor practices, the undersigned will recommend that it cease and desist therefrom and take the following affirmative action which it is found will effectuate the policies of the Act.

It has been found that the respondent assisted the Teamsters in obtaining a majority of members among the respondent's employees and thereafter on May 18, 1945, entered into a contract recognizing the Teamsters as exclusive bargaining representative of its employees, which contract is illegal because of the aforesaid assistance. Since the said contract expired by its terms on March 1, 1946, no recommendation that the respondent be ordered to cease and desist from giving effect to said contract is necessary. However, in order to prevent recognition of the Teamsters by the respondent either by oral agreement or otherwise, the undersigned will recommend that the respondent be ordered not to recognize the Teamsters as the exclusive bargaining representative of its employees unless and until said organization shall be duly certified by the Board as exclusive bargaining representative of its employees. Nothing herein, however, should be construed as re-

quiring the respondent to vary any wage, hour, seniority or other substantive features of its relations with the employees themselves, which the respondent has established in the performance of this contract, or to prejudice the assertion by the employees of any rights they may have under such agreement.

It has also been found that the respondent discriminated in regard to the hire and tenure of employment of Gus Cedar a "regular" employee. The undersigned will recommend that the respondent offer him immediate and full reinstatement to his former or substantial equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of pay he may have suffered by reason of such discrimination, by payment to him of a sum of money equal to the amount he normally would have earned as wages during the period from June 22, 1945, the date of his discharge, to the date of the respondent's offer of reinstatement to him, less his net earnings²⁰

²⁰By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company*, 8 N. L. R. B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v. N. L. R. B.*, 311 U. S. 7.

during said period. Normally in cases in which an employer has unlawfully discriminated against an employee by discharging him, in addition to affirmative relief, the Board orders the employer to cease and desist from in any manner infringing upon the rights guaranteed in Section 7 of the Act. In the instant case, however, the respondent discharged Cedar not to satisfy any purpose of its own but, rather, yielded to the pressure of the Teamsters. Under such circumstances, and in view of the absence of any evidence that danger of other unfair labor practices is to be anticipated from the respondent's conduct in the past, the undersigned will not recommend that the respondent be enjoined from the commission of any and all unfair labor practices. Nevertheless, the undersigned will recommend that the respondent be ordered to cease and desist from the unfair labor practices found herein.²¹

On the basis of the foregoing findings of fact and upon the entire record in the case, the undersigned makes the following:

Conclusions of Law

1. Food, Tobacco, Agricultural and Allied Workers Union of America, CIO, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, California State Council of Cannery Workers, AFL, and Cannery Workers Union, Local 22382, are labor organizations within the meaning of Section 2 (5) of the Act.

²¹See Matter of American Car and Foundry Company, 66 N. L. R. B. No. 129.

2. By discriminating in regard to the hire and tenure of employment of Gus Cedar, thereby encouraging membership in the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2 (6) and (7) of the Act.

Recommendations

Upon the basis of the above findings of fact and conclusions of law, the undersigned recommends that the respondent Scientific Nutrition Corporation, d/b/a Capolino Packing Corporation, Atwater, California, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Recognizing International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, as the exclusive representative of its employees for the purpose of collective bargaining unless and until said organization shall be certified by the National Labor Relations Board as the exclusive representative of such employees;

(b) Encouraging membership in International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, or any other labor organization, by discharging and refusing to reinstate any of its employees or in any other manner discriminating in regard to their hire and tenure of employment or any terms or conditions of employment;

(c) In any manner encouraging membership in International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, or any other labor organization, by yielding to pressure from that organization, or other pressure.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Offer to Gus Cedar immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges;

(b) Make whole the said Gus Cedar in the manner set forth in the Section entitled "The remedy for any loss of pay he may have suffered by reason of the respondent's discrimination against him;

(c) Withhold all recognition from International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, as the exclusive representative of its employees

for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment unless and until said organization shall have been certified by the National Labor Relations Board as the representative of such employees;

(d) Post at its Atwater, California, plant copies of the notice attached hereto and marked Appendix A. Copies of the notice to be furnished by the Regional Director for the Twentieth Region, after being duly signed by the respondent's representative, shall be posted by the respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced or covered by any other material;

(e) File with the Regional Director for the Twentieth Region, on or before ten (10) days from the date of the receipt of this Intermediate Report, a report in writing setting forth in detail the manner and form in which the respondent has complied with the foregoing recommendations.

It is further recommended that unless the respondent notifies said Regional Director in writing within ten (10) days from the receipt of this Intermediate Report that it will comply with the

foregoing recommendations, the National Labor Relations Board issue an order requiring it to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, as amended, effective November 27, 1945, any party or counsel for the Board may, within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, D. C., an original and four copies of a statement in writing, setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of the order transferring the case to the Board. Any party desiring to submit a brief in support of the Intermediate Report shall do so within fifteen (15) days from the date of the entry of the order transferring the case to the Board, by

filing with the Board an original and four copies thereof, and by immediately serving a copy thereof upon each of the other parties and the Regional Director.

/s/ SIDNEY LINDNER,
Trial Examiner.

Dated: June 20, 1946.

Appendix A

Notice to All Employees

Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not recognize International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, as the exclusive representative of our employees for the purpose of collective bargaining, unless and until said organization shall be certified by the National Labor Relations Board as the exclusive representative of such employees.

We Will Not in any manner encourage membership in International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, or any other labor organization, by yielding to pressure from that or any other labor organization or other pressure.

We Will Offer to Gus Cedar immediate and full reinstatement to his former or substantially equiv-

alent position without prejudice to any seniority or other rights and privileges enjoyed, and make him whole for any loss of pay suffered as a result of the discrimination.

All our employees are free to become or remain members of any labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

SCIENTIFIC NUTRITION
CORPORATION,

Employer.

By.....

Representative.

Title.

Dated.....

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Case No. 20-C-1422

In the Matter of

SCIENTIFIC NUTRITION CORPORATION,
d/b/a CAPOLINO PACKING CORPORATION,

and

FOOD, TOBACCO, AGRICULTURAL AND
ALLIED WORKERS UNION OF AMERICA, CIO,

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,

Party to the Contract.

AFFIDAVIT AS TO SERVICE

District of Columbia—ss.

I, Alfred F. Clarke, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 13th day of December, 1946, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Decision and Order [and Intermediate Re-

port] to the following-named persons, addressed to them at the following addresses:

Mr. James R. Agee,
1508 Financial Center Bldg.,
Oakland, California. Reg. No. 69663.

Mr. Warren G. Horie,
Merced, California. Re. No. 69664.

[Return Receipts, Registered Mail, Attached]

Gladstein, Andersen, Resner, Sawyer & Edises,
Att.: Bertram Edises, Esq.,
1440 Broadway,
Oakland, California. Reg. No. 69665.

Tobriner and Lazarus,
Att.: Mathew O. Tobriner, Esquire,
1035 Russ Building,
San Francisco 4, California. Reg. No. 69666.

Plain Mail to:

Capolino Packing Corp.
Atwater, California.

Food, Tobacco, Agricultural & Allied Workers of
America, CIO,
150 Golden Gate Avenue,
San Francisco, California.

International Brotherhood of Teamsters, Chauffeurs,
Warehousemen & Helpers of America,
AFL,
846 South Union,
Los Angeles, California.

(Returned not resent, other representatives
Notified, 1-2-47.)

/s/ ALFRED F. CLARKE.

Subscribed and sworn to before me this 13th day
of December, 1946.

/s/ MERLE J. SMITH,

Designated Agent for the
National Labor Relations
Board

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11694

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

SCIENTIFIC NUTRITION CORPORATION,
d/b/a CAPOLINO PACKING CORPORA-
TION,

Respondent.

PETITION FOR ENFORCEMENT OF AN OR-
DER OF THE NATIONAL LABOR RELA-
TIONS BOARD

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to
the National Labor Relations Act (Act of July 5,
1935, 49 Stat. 449, c. 372, 29 U.S.C. § 151 et seq.),
respectfully petitions this Court for the enforce-

ment of its order against respondent, Scientific Nutrition Corporation, d/b/a Capolino Packing Corporation, Atwater, California, and its officers, agents, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of Scientific Nutrition Corporation, d/b/a Capolino Packing Corporation, and Food, Tobacco, Agricultural and Allied Workers Union of America, CIO, and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, party to the contract, Case No. 20-C-1422."

In support of this petition, the Board respectfully shows:

(1) Respondent is a New York corporation, engaged in business in the State of California, within this judicial circuit, where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, the Board on December 13, 1946, duly issued an order directed to the respondent, and its officers, agents, successors, and assigns. The aforesaid order provides as follows:

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations

Act, the National Labor Relations Board hereby orders that the respondent, Scientific Nutrition Corporation, d/b/a Capolino Packing Corporation, Atwater, California, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Encouraging membership in International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or by discriminating in any other manner in regard to their hire or tenure of employment, or any term or condition of their employment;

(b) In any other manner encouraging or coercing its employees to become or remain members of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, or any other labor organization, whether or not because of pressure from that or any other labor organization, or because of other economic considerations.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer to Gus Cedar immediate and full reinstatement to his former or a substantially equivalent position, without prejudice to his seniority or other rights and privileges;

(b) Make whole Gus Cedar for any loss of pay he may have suffered by reason of the respondent's

discrimination against him, by payment to him of a sum of money equal to the amount that he normally would have earned as wages during the period from June 22, 1945, the date of his discharge, to the date of the respondent's offer of reinstatement, less his net earnings during said period;

(c) Post at its plant at Atwater, California, copies of the notice attached hereto, marked "Appendix A."¹ Copies of said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material;

(d) Notify the Regional Director for the Twentieth Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

(3) On December 13, 1946, the Board's Decision and Order was served upon respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to respondent's counsel.

¹In the event that this order is enforced by a decree of a Circuit Court of Appeals, there shall be inserted before the words "A Decision and Order," the words: "A Decree of the United States Circuit Court of Appeals Enforcing."

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, the Board is certifying and filing with this Court a transcript of the entire record in the proceeding before the Board, including the pleadings, testimony and evidence, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceeding set forth in the transcript and upon the order made thereupon as set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board, and requiring respondent, and its officers, agents, successors, and assigns to comply therewith.

NATIONAL LABOR
RELATIONS BOARD.

/s/ A. NORMAN SOMERS,
Assistant General Counsel.

Dated at Washington, D. C., this 18th day of July, 1947.

APPENDIX A

Notice to All Employees Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the Na-

tional Labor Relations Act, we hereby notify our employees that:

We Will Not in any manner encourage or coerce our employees to become or remain members of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, or any other labor organization, whether or not because of pressure from that or any other labor organization, or because of other economic considerations.

We Will Offer to Gus Cedar immediate and full reinstatement to his former or a substantially equivalent position, without prejudice to any seniority or other rights and privileges enjoyed, and make him whole for any loss of pay suffered as a result of the discrimination.

All our employees are free to become or remain members of any labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

SCIENTIFIC NUTRITION
CORPORATION.

By,
(Representative) (Title)

Dated.....

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

District of Columbia—ss.

A. Norman Somers, being first duly sworn, states that he is Assistant General Counsel of the National Labor Relations Board, petitioner herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing petition and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information and belief.

/s/ A. NORMAN SOMERS,
Assistant General Counsel.

Subscribed and sworn to before me this 18th day of July, 1947.

[Seal] /s/ KATHRYN B. HARRELL,
Notary Public, District of Columbia.
My Commission expires February 29, 1952.

[Endorsed]: Filed July 23, 1947.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS RELIED UPON
BY THE BOARD

The Board submits the following statement of points upon which it intends to rely in the above-entitled proceedings:

I.

The Board's findings of fact that respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8 (1) and (3) of the National Labor Relations Act are supported by substantial evidence.

II.

The Board's order is valid and proper under the Act.

/s/ A. NORMAN SOMERS,
Assistant General Counsel, National Labor Relations Board.

Dated at Washington, D. C., this 18th day of July, 1947.

CCA No. 11694

NOTICE OF FILING PETITION OF NLRB
FOR ENFORCEMENT OF ITS ORDER

United States of America—ss.

The President of the United States of America to
Food, Tobacco, Agricultural & Allied Workers
of America, CIO, 150 Golden Gate Avenue, San
Francisco, Calif., Greeting:

Pursuant to the provisions of Subdivision (e) of
Section 160, U.S.C.A. Title 29 (National Labor
Relations Board Act, Section 10(e)), you and each
of you are hereby notified that on the 23rd day of
July, 1947, a petition of the National Labor Rela-
tions Board for enforcement of its order entered on
December 13, 1946, in a proceeding known upon the
records of the said Board as "In the Matter of
Scientific Nutrition Corporation, d/b/a Capolino
Packing Corporation, and Food, Tobacco, Agricul-
tural and Allied Workers Union of America, CIO,
and International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers of Amer-
ica, AFL, Case No. 20-C-1422," and for entry of a
decree by the United States Circuit Court of Ap-
peals for the Ninth Circuit, was filed in the said
United States Circuit Court of Appeals for the
Ninth Circuit, copy of which said petition is at-
tached hereto.

You are also notified to appear and move upon,
answer or plead to said petition within ten days
from date of the service hereof, or in default of
such action the said Circuit Court of Appeals for

the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Fred M. Vinson, Chief Justice of the United States, this 23rd day of July, in the year of our Lord one thousand nine hundred and forty-seven.

[Seal] /s/ PAUL P. O'BRIEN,

Clérk of the United States Circuit Court of Appeals for the Ninth Circuit.

RETURN ON SERVICE OF WRIT

United States of America,

Northern District of California—ss:

I hereby certify and return that I served the annexed Petition on the therein-named Food, Tobacco, Agricultural & Allied Workers of America, CIO, by handing to and leaving a true and correct copy thereof with Mrs. Roberta Montgomery, as International Representative of the Food, Tobacco, Agricultural & Allied Workers of America, CIO, personally at Oakland, California, in said District on the 30th day of July, A. D. 1947.

GEORGE VICE,

U. S. Marshal.

By /s/ HERBERT R. COLE,

Deputy.

Marshal's Fees

Travel70

Service 2.00

\$2.70

[Endorsed]: Filed July 31, 1947.

[Title of Circuit Court of Appeals and Cause.]

ANSWER TO PETITION OF NATIONAL LABOR RELATIONS BOARD TO ENFORCEMENT OF ITS ORDER

In answer to the petition of National Labor Relations Board, hereinafter referred to as the Board, for the enforcement of its order dated December 13, 1946, respondent Scientific Nutrition Corporation, d/b/a Capolino Packing Corporation, admits, denies and alleges as follows:

I.

Respondent admits that it is a New York corporation, engaged in business in the State of California within this judicial circuit.

II.

Respondent admits that the Board made an order on December 13, 1946, a portion of which is set forth in its petition.

III.

Said order of the Board, together with the Findings of Fact and Conclusions of Law upon which it is based, is not supported by a preponderance of the evidence nor by any fact or facts contained in the record, and is contrary to law.

IV.

The petition of the Board herein should be denied by this Court for the reason that to grant it would be to deny to respondent and to its employees the

rights guaranteed to them by the Labor-Management Relations Act of 1947 and the National Labor Relations Act and would lead to and create labor disputes obstructing the free flow of commerce.

Wherefore, respondent prays that said petition be dismissed.

Dated August 29, 1947.

/s/ J. PAUL ST. SURE,

/s/ EDWARD H. MOORE,

/s/ JAMES R. AGEE,

Attorneys for Respondent.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11694

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

SCIENTIFIC NUTRITION CORPORATION,
d/b/a CAPOLINO PACKING CORPORATION,
Respondent.

AFFIDAVIT OF SERVICE BY MAIL

State of California,

County of Alameda—ss.

Edward H. Moore, being sworn, says that he is a citizen of the United States, over 18 years of age,

a resident of Contra Costa County, and not a party to the within action. That affiant's business address is 1415 Financial Center Building, Oakland, California. That affiant served a copy of the attached Answer to Petition of National Labor Relations Board for Enforcement of its Order by placing said copy in an envelope addressed to A. Norman Somers, Ass't General Counsel National Labor Relations Board, at his office address Rochambeau Building, Washington, D. C., which envelope was then sealed and postage fully prepaid thereon, and thereafter was on August 28, 1947, deposited in the United States mail at Oakland, California. That there is delivery service by United States mail at the place so addressed, or regular communication by United States mail between the place of mailing and the place so addressed.

/s/ EDWARD H. MOORE.

Subscribed and sworn to before me this 28th day of August, 1947.

[Seal] /s/ OLIVE A. BLEDSOE,
Notary Public in and for the County of Alameda,
State of California.

[Endorsed]: Filed Aug. 29, 1947.

NOTICE OF FILING PETITION OF NLRB
FOR ENFORCEMENT OF ITS ORDER

Case No. 11694

United States of America—ss.

The President of the United States of America to Scientific Nutrition Corporation, d/b/a Capolino Packing Corp., Atwater, California, and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America. AFL, 846 South Union, Los Angeles, California, Greeting:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor Relations Board Act, Section 10(e)), you and each of you are hereby notified that on the 23rd day of July, 1947, a petition of the National Labor Relations Board for enforcement of its order entered on December 13, 1946, in a proceeding known upon the records of the said Board as "In the Matter of Scientific Nutrition Corporation, d.b.a. Capolino Packing Corporation, and Food, Tobacco, Agricultural and Allied Workers Union of America, CIO, and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, Case No. 20-C-1422," and for entry of a decree by the United States Circuit Court of Appeals for the Ninth Circuit, was filed in the said United States Circuit Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon.

answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Circuit Court of Appeals for the Ninth Circuit will enter such decree as it seems just and proper in the premises.

Witness, the Honorable Fred M. Vinson, Chief Justice of the United States, this 23rd day of July, in the year of our Lord one thousand nine hundred and forty-seven.

[Seal] /s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

RETURN OF SERVICE OF WRIT

United States of America,
Southern District of California—ss.

I hereby certify and return that I served the annexed Order to Show Cause on the therein-named Scientific Nutrition Corp., d/b/a Atwater Packing Corp., by handing to and leaving a true and correct copy thereof with Claudia Burrell, assistant secretary of Scientific Nutrition Corp., personally at Atwater, California, in said District on the 22nd day of August, 1947.

ROBERT E. CLARK,
U. S. Marshal.

By /s/ JOSEPH B. TRACY,
Deputy.

Marshal's Fees	2.00
Expenses	6.95
<hr/>	
Total	\$8.95

RETURN ON SERVICE OF WRIT

United States of America,
Southern District of California—ss.

I hereby certify and return that I served the annexed Petition on the therein-named International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, by handing to and leaving a true and correct copy thereof with W. T. Carlyle, Attorney, at Los Angeles, in said District on the 8th day of August, 1947.

ROBERT E. CLARK,
U. S. Marshal.

By /s/ DAVID E. HAXLER,
Deputy.

Marshal's Fee	\$2.00
Mileage12
	<hr/>
Total	\$2.12

[Endorsed]: Filed Aug. 30, 1947.

[Title of Circuit Court of Appeals and Cause.]

PETITION FOR LEAVE TO INTERVENE

To the Honorable United States Circuit Court of Appeals for the Ninth Circuit:

The petition of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and California State Council of Cannery Unions, AFL, respectfully shows that:

I.

A petition for enforcement of an order of the National Labor Relations Board (hereinafter referred to as the Board) against respondent herein has heretofore been filed with the above Court by said Board, and the Clerk has heretofore issued a rule to show cause why said petition should not be granted.

II.

The substance of said petition is that respondent encouraged or coerced its employees to become or remain members of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and in the course of so doing discharged a certain employee. Said petition prays enforcement of an order directing respondent to cease and desist from encouraging or coercing its members to become or remain members of petitioners herein, and further prays enforcement of an order directing respondent to reinstate to his former position and make whole a certain named person.

III.

These petitioners, as collective bargaining agent of the respondent's employees and as possible parties to future collective bargaining agreements with the respondent, have a direct and substantial interest in the matters alleged in said petition and sought to be presented to the above-entitled Court. Petitioners herein have a direct and substantial interest in the successful defense of the party named as respondent in the above-entitled proceeding.

IV.

A copy of the Complaint in Intervention which these petitioners ask leave to file is attached hereto and marked Exhibit "A."

Wherefore, your petitioners ask leave to intervene in this proceeding against the Board, petitioner therein, and that they be granted leave to file the proposed Complaint in Intervention, and for such other and further relief as to the Court may seem proper.

Dated this 19th day of September, 1947.

TOBRINER & LAZARUS,

By /s/ ALBERT BRUNDAGE,

Attorneys for Petitioners.

[Endorsed]: Filed Sept. 19, 1947.

[Title of Circuit Court of Appeals and Cause.]

COMPLAINT IN INTERVENTION

Comes Now Plaintiffs in Intervention, after leave of this Court first had and obtained, and file this, their complaint in intervention, and for cause of action allege:

I.

Plaintiff's in intervention, hereinafter referred to as AFL, are the successor union to Cannery Workers Union, Local 22382, a federal local union of the American Federation of Labor, hereinafter referred to as Local 22382. Local 22382 entered into a collective bargaining contract with respondent in 1941, by the terms of which contract the parties adopted and agreed to be bound by the master agreement previously executed by and between the California Processors and Growers, Inc., and AFL. The master agreement set forth wages, hours and conditions of employment and contained a so-called union shop provision. On May 3, 1945, the Executive Council of the American Federation of Labor transferred the federal labor unions in the canning industry to the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. On May 18, 1945, petitioners in intervention, as successors to Local 22382, entered into a collective bargaining agreement with respondent in which the respondent agreed to recognize the union as the sole collective bargaining agent for all the employees of the respondent covered by the master agreement between the California Proc-

essors and Growers, Inc. and the AFL. This contract likewise contained the so-called union shop agreement.

II.

On May 11, 1945, the Cannery and Food Process Workers Council of the Pacific Coast advised the respondent that the employees of the respondent who were members of Local 22382 had terminated their membership in Local 22382 and organized under the name of Cannery and Food Process Workers Union of Modesto Area and had received a charter from the Cannery and Food Process Workers Council of the Pacific Coast. At said time and on May 18, 1945, when the contract with respondent was executed, AFL was the lawful representative of the employees of respondent for the purposes of collective bargaining. The mere presentation of said letter of May 11, 1945, did not alter or modify the collective bargaining status of petitioners.

III.

Gus Cedar was discharged, pursuant to said union shop provision of said valid agreement of May 18, 1945, between respondent and petitioner. Since petitioner was the lawful collective bargaining representative of the employees on May 18, 1945, and since the agreement of May 18, 1945, between respondent and petitioners provided for a union shop provision, it was not only the right but the obligation of respondent to discharge all persons who failed to maintain their membership in petitioner union.

IV.

The contention of the board that the receipt of the letter by respondent from the Cannery and Food Process Workers Council of the Pacific Coast halts the process of collective bargaining and forecloses the continuation of the relationship between the employer and the union, necessarily results in a hiatus in said process. Nothing contained in the National Labor Relations Act provides that such a letter forecloses collective bargaining and affords to a recalcitrant employer the opportunity to evade or disregard the collective bargaining obligation. Notwithstanding the provisions of the National Labor Relations Act and notwithstanding the practical debacle effected upon the bargaining process by its misinterpretation of the National Labor Relations Act, the Board would prevent AFL from continuing the existing relation and would divest the AFL of its contractual rights.

As and For a Second, Further, Separate, and Independent Cause of Action in Intervention, plaintiffs in intervention allege:

I.

Plaintiffs in intervention, hereinafter referred to as AFL, hereby refer to all of the allegations of paragraphs I, II and III of the first cause of action and by said reference hereby incorporate said allegations herein as though set forth in full.

II.

The National Labor Relations Board has ruled that a union must file a petition for certification within ten days after notifying the employer of its desire to bargain on behalf of the employees. No such petition was filed with said Board. Therefore, the charges filed by FTA-CIO are ineffective and void.

Wherefore AFL prays that the petition for enforcement of an order of the National Labor Relations Board in the above entitled cause be dismissed.

Dated: This 19th day of September, 1947.

TOBRINER & LAZARUS,

By /s/ ALBERT BRUNDIGE,

Attorneys for Petitioners.

State of California,
City and County of San Francisco—ss.

Albert Brundage, being first duly sworn, deposes and says:

That he is one of the attorneys for intervenors herein; that he has read the foregoing Complaint in Intervention and knows the contents thereof; that the same is true of his own knowledge except as to those matters therein alleged on information and belief, and as to those matters that he believes it to be true; that he makes this verification on behalf of intervenors for the reason that there is no officer of intervenors in the City and County of San Francisco authorized to verify said Complaint.

/s/ ALBERT BRUNDAGE.

Subscribed and sworn to before me this 19th day of September, 1947.

[Seal] /s/ LOUIS WIENER,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Sept. 22, 1947.

At a Stated Term, to wit: The October Term, 1946, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday the twenty-second day of September, in the year of our Lord one thousand nine hundred and forty-seven.

Present: Honorable William Denman, Circuit
Judge, Presiding,

Honorable Homer T. Bone, Circuit Judge

Honorable William E. Orr, Circuit Judge.

[Title of Cause.]

ORDER ALLOWING INTERVENTION

Upon reading the petition for leave to intervene submitted by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and California State Council of Cannery Unions, AFL, and good cause therefor appearing,

It Is Hereby Ordered that said petitioners be and they hereby are allowed to intervene in the above-entitled cause, and file and serve their Complaint in Intervention.

Before the National Labor Relations Board
Twentieth Region

Case No. 20-C-1422

In the Matter of:

SCIENTIFIC NUTRITION CORPORATION,
d/b/a Capolino Packing Corporation,

and

FOOD, TOBACCO, AGRICULTURAL & AL-
LIED WORKERS UNION OF AMERICA,
CIO,

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WARE-
HOUSEMEN AND HELPERS OF AMER-
ICA, AFL,

Party to the Contract.

Council Chamber, City Hall, Merced, California,
Tuesday, May 14, 1946.

Pursuant to notice, the above-entitled matter came
on for hearing at 10:10 a.m.

Before: Sidney Lindner, Esq.,
Trial Examiner.

Appearances:

Robert E. Tillman, Esq., San Francisco, California, appearing on behalf of the National Labor Relations Board.

Warren G. Horie, Merced, California, appearing on behalf of Food, Tobacco, Agricultural & Allied Workers Union of America, CIO, the Charging Union. [1*]

Tobriner & Lazarus, by Mathew O. Tobriner, 1035 Russ Bldg., San Francisco, California, appearing on behalf of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, Party to the Contract.

James R. Agee, 1508 Financial Center Building, Oakland California, appearing on behalf of Scientific Nutrition Corporation, d/b/a Capolino Packing Corporation, the Respondent. [2]

* Page numbering appearing at top of page of Reporter's certified Transcript of Record.

PROCEEDINGS

* * *

(Thereupon the documents above referred to were marked Board's Exhibit No. 1 (a) through 1 (i) inclusive for identification.)

Trial Examiner Lindner: Is there any objection to the receipt of these formal papers in evidence, Mr. Agee?

Mr. Agee: No objection.

Mr. Tobriner: No objection.

Trial Examiner Lindner: There being no objection Board's Exhibits 1 (a) to (i) inclusive are received in evidence.

(The documents heretofore marked Board's Exhibits Nos. 1 (a) through 1 (i) inclusive for identification were received in evidence.)

Trial Examiner Lindner: Before you proceed further, Mr. Tillman, unless you have other documents that you want to introduce at this time, I would like to call a short recess so that I can become acquainted with these papers and rule on your motion to dismiss, Mr. Tobriner.

Mr. Tobriner: I will submit the motion without argument if the Trial Examiner would so desire, and we may hold it over until the termination of the hearing when the ruling may be made.

Trial Examiner Lindner: Very well.

(Whereupon a short recess was taken.)

Trial Examiner Lindner: The hearing is in session.

Miss Reporter, please note that Mr. Warren G. Horie has entered an appearance for the FTA-CIO.

At this time, Mr. Tobriner, I will deny your motion to [8] dismiss.

You may proceed, Mr. Tillman.

Mr. Tillman: I will read into the record a proposed commerce stipulation.

“The Scientific Nutrition Corporation is a New York corporation having its principal office in New York City. It operates plants at Atwater, California, and at Colon, Cuba, where it is engaged in the business of canning and processing fruits and vegetables.

“At its Atwater, California, plant, the Respondent is engaged in business as the Capolino Packing Corporation. The annual sales of products from the Respondent’s Atwater plant total approximately \$1,500,000, of which approximately 90 per cent represents the amount of sales of products which are shipped from the plant in interstate commerce to points outside the State of California.

“The Respondent admits that in the operation of its Atwater plant it is engaged in commerce within the meaning of the National Labor Relations Act.”

Mr. Agee: That is so stipulated.

Mr. Tobriner: So stipulated.

Trial Examiner Lindner: Proceed.

Mr. Tillman: The parties have also indicated a

willingness to stipulate that the facts with respect to labor organization set out in Paragraph 2 of the Complaint are correct. [9]

Mr. Agee: So stipulated.

Trial Examiner Lindner: Do you so stipulate, Mr. Horie?

Mr. Horie: Yes.

Trial Examiner Lindner: Proceed.

Mr. Tillman: At this time, Mr. Examiner, the Board will call Mr. Cedar to the Stand.

GUS CEDAR

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Tillman:

Q. Mr. Cedar, will you state your complete name for the record please?

A. Gus Cedar; G-u-s C-e-d-a-r.

Q. What is your address, Mr. Cedar?

A. Route 1, Box 10, Delhi.

Q. Mr. Cedar, were you ever in the employ of the company? A. Yes.

Q. When were you first employed by the company? A. About June, 1944.

Q. What was your position at that time?

A. I was boiler room man, boiler room operator you might call it.

Q. Did you hold any other position with the company? A. No.

(Testimony of Gus Cedar.)

Q. How long did you work for the company?

A. Approximately a year.

Q. What date did your employment terminate?

A. June 22nd.

Q. What year was that? A. 1945.

Q. During this period of your employment did you work as a seasonal laborer or were you regularly employed? A. I was regular.

Q. That is, for the whole year?

A. Yes, continuous.

Q. How did your employment happen to terminate? A. I was discharged.

Q. When did you learn that you were discharged? A. June 22nd.

Q. The same day you were discharged?

A. Same day.

Q. Where were you when you learned that you were discharged? A. In the boiler room.

Q. Was anyone present besides yourself?

A. Well, my helper, Mr. Jones was there.

Q. Who else?

A. And another man by the name of Bloom that operates the boiler plant in Fresno. He was present.

Trial Examiner Lindner: Can you hear the witness, Mr. Agee? [11]

Mr. Agee: It is very hard for me to hear him. I wonder if the witness would speak a little louder.

Trial Examiner Lindner: Yes, will you please speak a little louder.

Q. (By Mr. Tillman): Besides yourself, Jones and Bloom, who was in the boiler room?

(Testimony of Gus Cedar.)

A. Mr. Torreano and Mr. McIsaac and another representative from the Teamsters Union.

Q. Who is Mr. Torreano?

A. He is representative of the Teamsters Union.

Q. You say Mr. McIsaac was there?

A. Yes.

Q. Who is Mr. McIsaac?

A. He is the man across the table, Manager for the Company.

Mr. Agee: Superintendent.

Trial Examiner Lindner: Mr. McIsaac is Superintendent of the Company?

Mr. Agee: Yes, Superintendent.

Trial Examiner Lindner: Thank you, Mr. Agee.

Q. (By Mr. Tillman): What took place on this occasion?

A. Well, I was told that just about *that it* was time for me to decide what to do.

Q. Who told you?

A. Mr. Torreano. And I said that I didn't know just what I could do at present on account of the condition at work. I didn't know who was going to at that time be the union in [12] the can-nery, in other words.

Trial Examiner Lindner: Just a minute. You tell us what anybody said to you, naming the person that said it and what you said to them. Don't tell us what you thought at the time. Just tell us exactly what was said.

Proceed.

(Testimony of Gus Cedar.)

A. Well, Mr. Torreano asked me what I was going to do and I said I wasn't doing anything about it.

Q. (By Mr. Tillman): Doing anything about what? A. Joining the Teamsters Union.

Q. Mr. Torreano wanted you to join the Teamsters Union? A. Yes, and I said "No."

Q. Then what did he say?

A. He said to go to the office and get my time, I was fired.

Q. Mr. Torreano said that?

A. He said that.

Q. What happened then? Did any other conversation take place? A. No.

Q. Did you say anything?

A. No. Mr. McIsaac said "I will have to get another man."

Q. Did Mr. McIsaac tell you to go to the office?

A. No, sir.

Q. What did you do after these men had talked to you in the boiler room? [13]

A. I went around and got my time.

Q. What time of the day was this?

A. 12:00 o'clock.

Q. Were you given any reasons orally by anyone as to why you were being discharged?

A. No.

Q. Did you question anybody in the company about your time being made up? A. No.

(Testimony of Gus Cedar.)

Q. Were you given a discharge slip?

A. I was.

Q. When did you get the discharge slip?

A. About 12:00 o'clock.

Q. The same time you picked up your time?

A. At the same time, yes.

Q. Do you have any idea when the discharge slip was made out? A. No, sir.

Mr. Tillman: I will ask that this document bearing the title "Employers Termination Notice" be marked for identification as Board's Exhibit 2.

(Thereupon the document above referred to was marked Board's Exhibit No. 2 for identification.)

Q. (By Mr. Tillman): Mr. Cedar, I will show you Board's Exhibit 2 for identification. Can you tell us what that is? [14]

A. Yes.

Q. What is it?

A. That is my discharge from the company.

Q. Is that the slip that you received on June 22, 1945? A. Yes.

Q. The slip bears the signature "C. Burrell," or "Burnell." What is that? A. "Burrell."

Q. Who was C. Burrell?

A. Clerk in the office. What capacity I don't know, official capacity.

Mr. Tillman: I will offer this exhibit in evidence with the request that I have leave to substitute copies therefor.

(Testimony of Gus Cedar.)

Trial Examiner Lindner: Is there any objection to receipt of Board's Exhibit 2?

Mr. Tobriner: No objection.

Mr. Agee: No objection.

Trial Examiner Lindner: Mr. Horie?

Mr. Horie: No objection.

Trial Examiner Lindner: There being no objection, Board's Exhibit 2 is received in evidence.

(The document heretofore marked Board's Exhibit No. 2 for identification was received in evidence.)

Board's Exhibit No. 2

United States Employment Service
California

EMPLOYERS TERMINATION NOTICE

B' N

To: Local USES Manager, _____, California Date June 22, 1945
(City)

This is to notify you that:

Name GUS CEDAR, S.S.A. No. 556-057 171

Address R. 1 BOX 10 DELHI. CAL.

Occupation BOILER ROOM MAN Employed at CAPOLINO PACKING CORP
(Location)

has left the employ of this company effective JUNE 22, 1945
(date)

Check	Reason for Termination
<input type="checkbox"/>	Resigned: Reason: _____
<input checked="" type="checkbox"/>	Discharged: Reason: <u>REFUSAL TO JOIN</u> <u>UNION (A F OF L) TEAMSTERS</u>
<input type="checkbox"/>	Lay Off: Anticipated Duration: _____

CAPOLINO PACKING CORPORATION
(Name of Employer)

By C. Burrell

Title Book Keeper

Address _____

1 copy to Local USES Office

1 copy to Employee

1 copy Retained by Employer

Form ES 1677
(9-42)

IN EV.

NATIONAL LABOR RELATIONS BOARD
20-C-422
CASE NO. _____ { PETITIONER / RESPONDENT } EXHIBIT NO. 2
IN THE MATTER OF SCIENTIFIC NUTRITION CORP.
DATE 5/14/46 : GUS CEDAR
ETHEL L. FISHER, OFFICIAL REPORTER
B. M. SCHOLZ

Q. (By Mr. Tillman): Mr. Cedar, when you were first employed by the company was there a union in the plant which represented [15] the company's employees? A. There was.

Q. What was the name of that union?

A. That was Local 22382, Modesto.

Q. Was it affiliated with any national organization?

A. Affiliated with the American Federation of Labor.

Q. Were you a member of Local 22382?

A. I was.

Q. When did you first become a member?

A. November 8, 1940.

Q. During the time in which you were a member was any attempt made to have the Teamsters take jurisdiction of Local 22382?

Mr. Tobriner: Objected to on the ground that the question is uncertain to say "was any attempt." It is asking for an opinion.

Trial Examiner Lindner: I will sustain that objection.

Mr. Tillman, I would suggest that you focus your questions with respect to the particular Respondent that we are dealing here with.

Q. (By Mr. Tillman): The membership of Local 22382, did that comprise just employees of the company? A. At this plant, it was.

Q. Were there other employees of other companies who were members of Local 22382?

A. I don't understand the question.

Mr. Tobriner: I am going to object to it anyway because it would be immaterial, would it not?

Trial Examiner Lindner: Well, I don't think so. I will overrule the objection.

Was Local 22382 a Local that had as its members employees of other plants besides the Capolino Packing Corporation?

The Witness: It was.

Trial Examiner Lindner: All these different employees of the various companies were members of the one Local 22382, is that correct?

The Witness: Correct, sir.

Q. (By Mr. Tillman): I will ask you then, Mr. Cedar, if, during the time that you were a member of Local 22382 there was any discussion of Local 22382 affiliating with the Teamsters?

A. Not to my knowledge.

Q. During the time that you were employed at the company had you heard any discussion that Local 22382 was going to affiliate with the Teamsters? A. Yes, I have heard discussions.

Q. When did you first learn that the Teamsters contemplated taking jurisdiction of the Cannery Workers Local?

Mr. Tobriner: I object.

Mr. Agee: I object to that on the ground it is wholly [17] without the issues and immaterial as to the Respondent Company. I can't see what purpose that question would have. Would that be binding on us? The question is "When did you first learn that there was going to be an attempt."

(Testimony of Gus Cedar.)

Mr. Tillman: That the Teamsters contemplated——

Trial Examiner Lindner: I will overrule the objection, Mr. Agee.

Mr. Tobriner: We also object on the ground that what contemplations or mental attitudes or intentions the Teamsters had, whomever they may be, would be immaterial. We have not centered the word "Teamsters" on any particular organization, or who it is or where it was or what time it was.

Trial Examiner Lindner: Mr. Tillman is undoubtedly referring to the Teamsters Union that now has a contract with the Respondent. Is that correct?

Mr. Tillman: That is correct, yes. I was using a shorthand title with reference to the party to the contract.

Mr. Tobriner: I object on the ground that the intention and the contemplation would be immaterial. The only thing we are interested in, I think, Mr. Examiner, is what happened or what facts occurred; and the witness' ideas or opinions about the Teamsters' contemplation would hardly be of any interest to us here.

Trial Examiner Lindner: I think you might well rephrase the question, Mr. Tillman. What we undoubtedly want to know [18] is when the witness learned the Teamsters Union had obtained recognition from the Company.

Mr. Tillman: My question is preliminary to the question of when the Teamsters Union was recog-

(Testimony of Gus Cedar.)

nized by the Company. It is more or less background material without which the recognition by the company won't present a clear picture.

Trial Examiner Lindner: Very well, proceed. I will overrule your objection, Mr. Tobriner.

Q. (By Mr. Tillman): Do you remember the question? When did you first learn that the Teamsters contemplated taking over Local 22382?

A. I would say about the latter part of April or first part of May.

Q. How did you learn of this matter?

Trial Examiner Lindner: That is in 1945, is that correct?

Q. (By Mr. Tillman): Is that correct?

A. Yes.

Well, we were called at a meeting called by the company up there in the warehouse, and Mr. Capolino told us.

Q. Is this the first time that you learned that the Teamsters had been awarded jurisdiction or were going to take jurisdiction?

A. First time I learned from the company. Before that it was rumored. [19]

Mr. Tobriner: In other words, is the answer then—I am not clear on that answer.

Trial Examiner Lindner: Read the answer, please.

(The answer referred to was read by the reporter.)

(Testimony of Gus Cedar.)

Q. (By Mr. Tillman): Mr. Cedar, I might ask you if you had been given any notice by anyone that the Teamsters were going to take jurisdiction?

A. No, sir.

Q. Then you were telling us when you first learned. What was the occasion?

A. That was the time when Mr. Capolino told us in the warehouse.

Q. Who is Mr. Capolino?

A. Mr. Capolino.

Q. Who is he?

A. He was the owner of the company.

Q. Whom did he call together in the warehouse?

A. Everybody in the plant.

Q. What took place at that meeting?

A. He said that he had received notice that the Teamsters Union were going to take over the plant, and there was nothing we could do about it, and he wanted to know what we were going to do about it.

Mr. Agee: I didn't hear that.

Trial Examiner Lindner: Read the answer. [20]

(The answer referred to was read by the reporter.)

Q. (By Mr. Tillman): Did he state anything else to the employees?

A. Yes, he also said, "If you don't go with the Teamsters they will quit delivery, the plant will be tied up and we will all be out of work."

Q. Was there anything else?

A. Well, may I say what I said?

(Testimony of Gus Cedar.)

Q. Did Mr. Capolino say anything else?

A. No. That was about all he said.

Q. Did anyone else say anything at this meeting?

A. No, sir. May I say what I said?

Trial Examiner Lindner: Did you say anything at the meeting?

The Witness: I asked Mr. Capolino to give us time to contact our Union in Modesto, 22382, and find out what it was all about.

Q. (By Mr. Tillman): Was any reference made to any letters from the Teamsters?

A. Not at that time.

Q. While you were working for the company did you see anyone in the plant soliciting membership for the Teamsters? A. I did.

Q. When was the first time that you saw anyone soliciting membership for the Teamsters? [21]

A. Well, it was shortly thereafter, after we had the first meeting. I would say some time in the first part of May.

Q. Shortly after this meeting with Capolino?

A. Yes, sir.

Q. Did you say there was another meeting?

A. There was.

Q. Who called this meeting?

A. Company, I suppose.

Q. Who told you to attend the meeting?

A. I was told by one of the workers, "Come to the warehouse, we are going to have the meeting."

Q. Is that where the meeting was held?

A. Yes, sir.

(Testimony of Gus Cedar.)

Q. Who was at that meeting?

A. Mr. King, Mr. Brown, Mr. Torreano and three or four more men that I don't know the names of, but they were representatives of the Teamsters Union.

Trial Examiner Lindner: How do you know that?

The Witness: They were introduced as such.

Q. (By Mr. Tillman): King and Brown were representatives of the Teamsters? A. Yes.

Q. Besides the representatives of the Teamsters, who else attended the meeting?

A. Well, Mr. McIsaac and Mr. Stewart. [22]

Q. Who is Mr. Stewart?

A. He was then called Superintendent of the Plant. I don't know what he really was, but he was called "Superintendent." He was next to Mr. McIsaac.

Q. He reported to Mr. McIsaac, did he?

A. Well, he did.

Q. Was he over any particular part of the cannery?

A. I was told he had charge of the actual work in the cannery.

Q. Of all the work?

A. Yes, I would say so.

Q. You have told us representatives of the Teamsters were there and Mr. McIsaac and Mr. Stewart. Who else was there?

A. Everybody else that worked in the Plant.

(Testimony of Gus Cedar.)

Q. Was this meeting during regular working hours? A. It was.

Q. What took place at the meeting?

A. Well, Mr. King wanted us to sign up with the Teamsters and he wanted to know how many was ready to sign up, and that was all that was said. It was just a meeting trying to have us sign up for the Teamsters.

Mr. Tobriner: Objected to on the ground that is conclusion and opinion of the witness after "all that was said." "It was such and such and such" is conclusion and opinion.

Trial Examiner Lindner: I sustain the objection.

Q. (By Mr. Tillman): Did anyone say anything besides Mr. [23] King?

A. Well, there were just comments made by the other members of the Teamsters Union he brought in, but I couldn't repeat what was said. But like I said, it was all in the line of trying to have us sign up with the Teamsters Union.

Mr. Tobriner: Objected to.

Trial Examiner Lindner: You have an objection?

Mr. Tobriner: I have an objection. That again is opinion and conclusion. He doesn't state to whom those statements were attributed.

Trial Examiner Lindner: I will sustain the objection.

Mr. Tillman, if you will please get from the witness exactly what Mr. King said with respect to the

(Testimony of Gus Cedar.)

employees with respect to his request, if such a request was made that the employees sign up with the Teamsters——

Q. (By Mr. Tillman): Mr. Cedar, just tell us the conversation you remember, and not your conclusions of what the meeting was for. Could you tell us again what Mr. King said to the employees?

A. That is just what he said. He wanted us to say whether we were going to sign up or not. That was the conversation.

Trial Examiner Lindner: Did he have with him, did Mr. King have with him any application cards for the Teamsters Union?

The Witness: I don't know. [24]

Trial Examiner Lindner: Did he have any literature for the Teamsters Union that he gave to the employees that were assembled there?

The Witness: I don't think he had. I didn't see any.

Trial Examiner Lindner: In other words, all he said, according to your testimony, is that he wanted to know when the employees were going to sign up for the Teamsters Union, is that correct?

The Witness: That is correct, sir.

Q. (By Mr. Tillman): You testified a short while ago that the representatives of the Teamsters were introduced as representatives of the Teamsters. Who introduced them as such?

A. Mr. King.

Q. Mr. King did? A. Yes.

Q. Did anyone introduce Mr. King to you?

A. No.

(Testimony of Gus Cedar.)

Q. Did you know Mr. King beforehand?

A. Yes, sir.

Q. How did you know him?

A. Well, he was connected with our Local 22382.

Q. Had he been an official or something?

A. He had taken the place of Mr. Tomson which was then Secretary-Treasurer of Local 22382. [25]

Q. After the meeting at which Mr. King spoke to the employees, did the representatives of the Teamsters solicit employees individually?

A. Yes.

Q. What did you observe? What did you see take place?

A. Well, each one was asked pointblank if they were going to sign up or not. That is about all that took place.

Q. Did anyone ask you? A. Yes.

Q. Do you remember who asked you?

A. Mr. Torreano and Mr. King.

Trial Examiner Lindner: Was Mr. King an employee of the company?

The Witness: No, he represented the Teamsters.

Trial Examiner Lindner: He was not an employee of the company?

The Witness: No, he was not.

Trial Examiner Lindner: Mr. Torreano was an employee of the company, is that correct?

The Witness: No, Mr. Torreano was a representative of the Teamsters Union.

Trial Examiner Lindner: He was not an employee of the company either?

The Witness: No, sir.

(Testimony of Gus Cedar.)

Trial Examiner Lindner: You testified that they asked [26] you to join the Teamsters?

The Witness: Correct.

Trial Examiner Lindner: Did that happen while you were at work in the plant?

The Witness: Yes, sir.

Trial Examiner Lindner: When did that happen, do you remember?

The Witness: Exact date?

Trial Examiner Lindner: To the best of your knowledge.

The Witness: Well, I would say about the middle of June—no, middle of May.

Trial Examiner Lindner: Did that happen after this meeting that you just testified to?

The Witness: Correct.

Trial Examiner Lindner: Both of these men, Mr. King and Mr. Torreano, asked you to join the Teamsters Union, after this meeting, is that correct?

The Witness: That is correct.

Trial Examiner Lindner: Proceed.

Q. (By Mr. Tillman): I want the record to be clear there now. Did these men come around there to you right after the meeting on the same day of the meeting? A. Yes.

Q. Were there any more meetings at which the Teamster representatives spoke to the employees like this one you have just [27] described?

A. Yes, there was a second meeting.

(Testimony of Gus Cedar.)

Q. When did that occur with respect to this first one? How much later?

A. About a week later, I would say.

Q. How was that meeting called?

A. Same manner. I was called to go to the warehouse and have a meeting.

Q. By some employee?

A. Someone of the employees called me.

Q. Was the meeting held in the warehouse?

A. It was.

Q. Who was present this time?

A. The same people that were at the first meeting the Teamsters Union had.

Q. Were all the employees present?

A. To my knowledge they were. I guess everybody working was there.

Q. Can you identify any of the representatives of the Teamsters that attended this second meeting?

Mr. Tobriner: Mr. Tillman, isn't that a third meeting now?

Mr. Tillman: The second Teamsters meeting, but a third meeting.

Trial Examiner Lindner: For the purposes of this record, [28] in order to have the record clear, this witness is testifying to a third meeting that took place in the plant premises?

Mr. Tillman: Yes.

Q. (By Mr. Tillman): Can you identify any of the Teamsters that were present at this meeting?

A. There were Mr. King, Mr. Brown and I am not certain about Mr. Torreano, but of course I won't say "I think."

(Testimony of Gus Cedar.)

Q. You stated the same people as were—well, it is going to be confusing—at the second meeting or the first meeting at which you said Teamsters came into the plant. You testified Mr. McIsaac and Mr. Stewart were there. Were they at this third meeting also? A. They were.

Trial Examiner Lindner: Mr. Tillman, will you have the witness identify the positions that Mr. King, Mr. Brown and Mr. Torreano held with the Teamsters, if he knows.

Q. (By Mr. Tillman): Do you know whether or not any of those three gentlemen, King, Brown or Torreano held any office in the Teamsters Union?

A. Mr. King introduced himself as working for the Teamsters Union.

Q. Did he say in what capacity?

A. No, sir, he did not.

Q. What about Brown and Torreano?

A. We were never told what capacity they held in the Teamsters [29] Union.

Trial Examiner Lindner: Were they introduced to you at these meetings that you have testified to as representatives of the Teamsters Union?

The Witness: They were, sir.

Trial Examiner Lindner: Did Mr. King so introduce them?

The Witness: Yes, sir.

Trial Examiner Lindner: By the way, did either Mr. McIsaac or Mr. Stewart, at the second meeting that you testified to, do any talking to the employees?

The Witness: No, sir.

(Testimony of Gus Cedar.)

Trial Examiner Lindner: Where did they sit, or where were they present at the time of the meeting?

The Witness: We were lined up like employees was on our left and the Teamsters were facing the employees and the officials as Mr. McIsaac, Mr. Stewart and two or three others was on our right, so we just about made a ring, I would say.

Trial Examiner Lindner: In other words, all the employees were standing around in the warehouse, is that correct?

The Witness: That is right.

Trial Examiner Lindner: From your description, the representatives of the Teamsters Union were opposite the employees, and Mr. McIsaac and Mr. Stewart were on one side, [30] is that correct?

The Witness: Correct, sir.

Trial Examiner Lindner: Proceed.

Q. (By Mr. Tillman): At this last meeting that you are talking about what took place?

A. Repetition of the first meeting.

Q. Who was spokesman at this meeting, the third meeting? A. Mr. King.

Q. What is your best recollection of what was said at this meeting?

A. Trying to get us to sign up.

Q. Just tell us, try to tell us the words that Mr. King said to you or to the employees.

A. Well, it's pretty hard to repeat his words, but what he said was this: That he just told us there was nothing we could do, just wanted to know when we were ready to sign up. He had already gotten

(Testimony of Gus Cedar.)

some members but there were quite a few holding off.

Q. What else did he say?

Trial Examiner Lindner: How long did these meetings last, Mr. Witness?

The Witness: I would say they lasted about 10 to 15 minutes.

Trial Examiner Lindner: What time of the day was this meeting held? [31]

The Witness: It was in the middle of the day, but I am not sure whether it was shortly before noon or shortly after noon.

I will also state that Mr. King said that "If you boys don't sign up, you will be all sitting out in the park because this plant is going to be closed."

Trial Examiner Lindner: When did he say that? Was that at this last meeting?

The Witness: I believe that was the last meeting.

Q. (By Mr. Tillman): After this last meeting did the Teamster representatives go around in the plant as they had done in the second meeting talking to individual employees? A. Yes.

Q. Did any of them talk to you again?

A. Yes, Mr. Torreano talked to me again, wanted to know what I was going to do about it. I said "Not anything about it right now."

Q. Is that all that was said then?

A. He answered me and said, "Well, either sign up or else," he said, "You know, out you go."

Q. Were there any other meetings?

Mr. Agee: Pardon me, who did he say said that?

Mr. Tillman: Torreano.

(Testimony of Gus Cedar.)

Q. (By Mr. Tillman): Can you recall any other meetings at which all the employees were gathered together? [32]

A. There was a fourth meeting held by the company which was held by Mr. McIsaac, I think, where he was the speaker, and he said that—

Mr. Tobriner: Give us the date, please.

Q. (By Mr. Tillman): Let us have the time as best you can approximate it with relation to the third meeting.

A. I would say that was the latter part of May or perhaps the first part of June.

Q. Where was this meeting?

A. It was held in the Cooking Department.

Q. Cooking? A. Cooking Department.

Q. Who attended that meeting?

A. All employees.

Q. Were there any representatives from outside of the plant at this meeting? A. No, sir.

Q. Who said what at this meeting?

A. Mr. McIsaac made a statement that the company had signed up with the Teamsters and it was too late now to do anything about it.

Q. Had signed up with the Teamsters?

A. Yes.

Q. Did he state anything more in that particular place? A. No. [33]

Q. You don't recall any more? A. No.

Q. Did he mention that they had signed a contract?

A. I don't know if he made that statement, but that is how I understood it.

(Testimony of Gus Cedar.)

Q. Do you recall anything else that was said by Mr. McIsaac? A. No, sir.

Q. Was there any reference to the Seafarers Union? A. No, sir.

Q. Did anyone make any comments after Mr. McIsaac spoke? A. Not to my knowledge.

Q. Is he the only one that said anything at the meeting?

A. I believe I said that I didn't call the Teamsters in here. I believe that was the only statement that was made, and I think I made that in reference to what he said, that it's too late to do anything about it. I said, "I didn't call the Teamsters in here."

Q. To whom did you say that?

A. I told it to Mr. McIsaac.

Trial Examiner Lindner: What did you mean by that?

Mr. Agee: Pardon me, I don't like to object to the Trial Examiner's question. What he meant by it, I would certainly think would be his opinion and conclusion and not in any way binding on the company I represent.

Trial Examiner Lindner: Yes, I understand that. I just [34] wanted to find out from the witness what he meant when he said he didn't call the Teamsters in there.

Mr. Agee: That would be allowing him to engage in giving an opinion and conclusion. He might have his own ideas and conjectures about this thing. For all I know, he might suspect, without any more than mere conjecture, that the company called the

(Testimony of Gus Cedar.)

Teamsters in, and if you ask him that question he might say "My idea was that the Company called the Teamsters in," but he had no evidence on which to base it. That is the danger of the question.

Trial Examiner Lindner: Suppose we let the witness answer and see if you have objections?

The Witness: Shall I answer?

Trial Examiner Lindner: Yes.

The Witness: That is just what I meant by it, that the company called the Teamsters in and it was not to blame us for it.

Mr. Tobriner: We move it be stricken.

Trial Examiner Lindner: I will grant the motion to strike the witness' answer.

Proceed, Mr. Tillman.

Q. (By Mr. Tillman): Did you ever have any conversation involving the Teamsters with Mr. McIsaac? A. Yes, I had one conversation.

Q. When did that take place? [35]

A. I said it was about the middle of May.

Q. Was it before this meeting at which Mr. McIsaac spoke, or after? A. Yes, it was.

Q. Before? A. Yes.

Q. Where did you talk to Mr. McIsaac?

A. In Mr. McIsaac's office.

Q. Who was there besides Mr. McIsaac and yourself? A. No one.

Q. Tell us what Mr. McIsaac said and then what you said.

A. Uh-huh. Mr. McIsaac wanted to know what I am going to do about it, whether I am going to

(Testimony of Gus Cedar.)

join the Union. I answered back that I hadn't made up my mind as yet.

Q. Is that all the conversation?

A. That is all, yes.

Trial Examiner Lindner: Did he ask you whether you were going to join the Teamsters?

The Witness: Yes.

Q. (By Mr. Tillman): Did you tell him why you hadn't made up your mind?

A. I think I made some comment that I didn't know who was going to be the Union in the Cannery, so naturally I wanted to safeguard my own interest and wanted to wait and see.

Q. Did you ever have any conversation by yourself with Mr. [36] Capolino? A. Yes.

Mr. Tobriner: I will object to this on the ground that Mr. Capolino is deceased. Conversation which he held with him, at least under common law rules would not be admissible because we would have no way of checking on what the witness states and what he claims was stated by Mr. Capolino.

I realize this is a looser procedure——

Trial Examiner Lindner: I wouldn't say the procedure was looser, but in procedure here we are not bound by strict rules of evidence, as you know, Mr. Tobriner, but I think as a matter of fact, I am sure that we should like to have all of the facts, and even though Mr. Capolino is not here to contradict any facts that this witness may testify to, it is the job of the Trial Examiner to determine whether the witness is telling the truth.

Mr. Agee: Of course it might be of some aid

(Testimony of Gus Cedar.)

and assistance to the Trial Examiner if the person supposed to be on the other side of the conversation was available and say, was not called, something of that sort.

We have the so-called "dead man rule" embodied in our code in California, and we have the rule that a claim cannot be made based upon oral conversation with the decedent on the very fair ground the decedent is not there to deny or dispute it. [37]

Trial Examiner Lindner: Suppose we let the witness testify and I will consider the rule that you have just stated.

You may answer the question. Do you remember the question?

A. Yes. The question was: You want to know if we were going to sign up with the Teamsters Union.

Q. (By Mr. Tillman): Have we put the time and the place of this in? I don't think we have.

Let me ask you first if you remember when this conversation took place with Mr. Capolino?

A. Yes, it was just about the first or second week in June. It was not very long before I got fired.

Q. Where was the conversation?

A. In the boiler room.

Q. Who was in the boiler room?

A. Myself and Mr. Jones.

Q. Your helper?

A. Helper, worked with me.

Q. How did it happen Mr. Capolino came into the boiler room at this particular time?

(Testimony of Gus Cedar.)

A. He come down about this here slip, sent around, signing applications for the Seafarers Union. Somebody had gotten them into the Cannery and he had gotten hold of them and he came down to the boiler room and wanted to know what it was all [38] about and I said, "Don't blame me for it. I didn't bring them in here."

Trial Examiner Lindner: Did he ask you what it was all about?

The Witness: Yes, about what this here signing up was.

Trial Examiner Lindner: Did he show you this piece of paper that you are talking about?

The Witness: Yes, sir.

Trial Examiner Lindner: When he asked you what it was all about?

The Witness: Yes, he said, "You can't do those things around here. If you want to work here you have to join the Teamsters Union."

Q. (By Mr. Tillman): Did you say anything else than what you have testified here?

A. No, I didn't say anything else.

Mr. Tobriner: We move it be stricken on the ground of the Common Law Rule, Civil Code Rule in California that the witness, stating what he said Mr. Capolino stated, could not be controverted because of Mr. Capolino's death, and the rule is if death closes the mouth of the party the witness cannot put words in it.

Trial Examiner Lindner: The motion is denied.

(Testimony of Gus Cedar.)

For the record, Mr. Agee, and Mr. Tobriner, when did Mr. Capolino pass away. [39]

Mr. Agee: Thanksgiving morning 1945.

Q. (By Mr. Tillman): Mr. Cedar, when you were first employed by the company in June of 1944 was there a check off of dues for Local 22382?

A. There was.

Q. How long did that check off continue?

A. It continued until 1945.

Q. What month?

A. First of the year, discontinued after New Year.

Q. Did Local 22382 continue to collect dues from January of 1945 on? A. Yes.

Q. How did they collect dues then?

A. Through the shop steward.

Q. After the Teamsters came, or after one of these meetings in which the Company said they had signed with the Teamsters, did the Teamsters have a check off in the plant?

A. It was, I understand it was begun——

Trial Examiner Lindner: Don't tell us what you understand. Did they have a check off? Did the plant check off union dues for the employees' wages after the Teamsters came into the plant?

The Witness: They did.

Trial Examiner Lindner: Were the Union dues checked off from your wages? [40]

The Witness: No, sir.

Q. (By Mr. Tillman): During the time that you were a member of Local 22382 was there ever

(Testimony of Gus Cedar.)

an occasion, or did you ever attend any meeting where membership voted on whether or not to affiliate or to join up with the Teamsters?

Mr. Tobriner: Just a minute, Mr. Tillman, will you limit the time, please.

Q. (By Mr. Tillman): I can limit the time to May or June of 1945.

During that time did you attend any meeting of Local 22382 at which they voted on the question of whether or not they would join up with the Teamsters?

Trial Examiner Lindner: Mr. Tillman, pardon me for interrupting you, but the witness testified previously if I remember correctly, that Local 22382 had as members employees of various plants in and around this area. I think we should know whether the employees of the particular plant involved met as a separate unit in Local 22382 before that line of questioning continues.

Mr. Tillman: I will withdraw the question and go back further yet.

Q. (By Mr. Tillman): Did you ever attend any meetings of Local 22382? A. I did.

Q. Where were those meetings held? [41]

A. Modesto.

Q. Were any meetings held of just the employees at the plant? A. Yes, in Merced.

Q. They were held in Merced? A. Yes.

Q. How often were these meetings in Merced held?

A. I believe there were only two meetings held.

(Testimony of Gus Cedar.)

Q. In Merced? A. Yes.

Q. How often did the entire local meet in Modesto? A. Once a month, but not regular.

Q. Did you attend the meetings which were held in Modesto—all you can remember.

A. I attended three meetings as far as I can remember. I attended three meetings in 1945.

Mr. Tobriner: Those meetings you are referring to are in Modesto?

Mr. Tillman: Yes.

Q. (By Mr. Tillman): At any of those meetings were the members given an opportunity or asked to vote on the question of whether or not the Local should join up with the Teamsters?

A. No.

Trial Examiner Lindner: Was it ever discussed?

The Witness: Not to my knowledge. [42]

Q. (By Mr. Tillman): Do you know whether the Local voted to join with the Teamsters at any meeting that you were not present at?

Mr. Agee: I object to that as calling for hearsay.

Trial Examiner Lindner: Objection sustained.

Q. (By Mr. Tillman): Do you know of any union by the name of Cannery and Food Process Workers Union of Modesto area? A. Yes, sir.

Q. How do you know that Union?

A. I have got a book on it. I was a member.

Q. You were a member? A. I was.

(Testimony of Gus Cedar.)

Q. When did you become a member of that Union? A. June.

Q. 1945? A. 1945.

Trial Examiner Lindner: Is that another union now?

Mr. Tillman: Yes.

Trial Examiner Lindner: That is different from the Unions that we have already talked about on the record?

Mr. Tillman: Yes.

Q. (By Mr. Tillman): Do you know how this new union that we are just talking about now came into being?

Mr. Tobriner: Objected to.

A. No. [43]

Mr. Tobriner: Oh, well——

Trial Examiner Lindner: Did you have an objection?

Mr. Tobriner: Well, he doesn't know.

Q. (By Mr. Tillman): Who were the officers of the Cannery and Food Process Workers Union?

Mr. Tobriner: At what time, Mr. Tillman?

Mr. Tillman: June, 1945.

A. At that time that was organized, Mr. Tomson was then the Secretary and Mr. Burrow was President.

Q. (By Mr. Tillman): Had any of those gentlemen held office in Local 22382? A. Yes.

Q. Which gentlemen have held office?

A. Mr. Tomson was Secretary-Treasurer and Mr. Burrow was President.

(Testimony of Gus Cedar.)

Trial Examiner Lindner: Of Local 22382?

The Witness: Correct.

Q. (By Mr. Tillman): Who collected dues for this Cannery and Food Process Workers Union, or how were they collected?

Mr. Tobriner: Just a minute, what date, Mr. Tillman?

Mr. Tillman: June, 1945.

Trial Examiner Lindner: You may answer the question. Who collected dues, how were they collected?

The Witness: We paid into the office.

Trial Examiner Lindner: Where was the office located? [44]

The Witness: Modesto. The office was moved sometimes.

Trial Examiner Lindner: In June of 1945 the offices were located in Modesto, is that correct?

The Witness: That is correct.

Trial Examiner Lindner: When did you become a member of this Cannery and Fruit Workers Union?

Mr. Tobriner: Food Process Workers Union of Modesto Area.

Trial Examiner Lindner: When did you become a member of that?

The Witness: June.

Trial Examiner Lidner: What date?

The Witness: The date is in the book here. Do you want it in evidence?

(Testimony of Gus Cedar.)

Trial Examiner Lindner: Just read the date. You may refresh your recollection from that.

The Witness (reading from document): June 22, 1945.

Mr. Tobriner: Mr. Trial Examiner, I don't know if it is permissible, but I would like to see the document the witness is reading from.

Trial Examiner Lidner: Yes.

(The document was handed to counsel.)

Trial Examiner Lindner: Did you become a member of that Cannery and Food Process Workers Union while you were still employed by the Company? [45]

The Witness: Yes.

Trial Examiner Lindner: You were discharged on June 22, 1945, is that correct?

The Witness: That is correct.

Trial Examiner Lindner: You became a member of this Union on June 22, 1945, is that correct?

The Witness: No, previous to that.

Trial Examiner Lindner: Previous to that?

The Witness: Yes.

Trial Examiner Lindner: Do you remember when?

The Witness: It's in the book there, June. It's a transfer there from the old 22382 into this Union, see.

Trial Examiner Lindner: According to this dues payment book that you have here, Mr. Cedar,

(Testimony of Gus Cedar.)

it indicates that you became a member June 2, 1945.

The Witness: Is that what it has?

Trial Examiner Lindner: Dues were paid for months prior to that.

Mr. Tobriner: Initiation is January 21, 1941.

Trial Examiner Lindner: By the way, Mr. Tillman, we have been looking at this. Do you have any objection to our looking at it?

Mr. Tillman: I have no objection.

Just for the clarity, I suppose I had better ask a couple [46] of questions here.

Q. (By Mr. Tillman): This initiation date that appears on the booklet of 1/21/41, to what does that have reference?

A. I don't know. The book was given to me in the office and there it is.

Q. Was this book given to you before you were discharged or afterwards?

A. I don't recollect that.

Q. This Cannery and Food Process Workers Union, did you join that before you were discharged? A. Yes.

Q. Did you know of such a union—let me ask you when was the first time that you knew of such a union?

A. That union was organized, to my knowledge, after the injunction took place against our old Local 22382.

(Testimony of Gus Cedar.)

Q. After what took place?

A. That injunction by the Teamsters.

Mr. Tobriner: I will have to ask that be stricken. As a matter of fact, when the witness talks about any injunction by the Teamsters he is giving his own conclusion which happens to be completely erroneous. I don't know what injunction he is referring to, but if Mr. Tillman refers to this we had better get the records.

Trial Examiner Lindner: I will sustain the objection and strike the witness' last answer. [47]

Q. (By Mr. Tillman): I had a prior question. I was asking you when you first heard of this Cannery and Food Process Workers Union. Can you identify the time by some other means besides an injunction? A. No.

Q. What month in what year did you first learn of this Union?

Mr. Tobriner: I object on the ground that we are wasting time.

A. I say that I first learned that——

Mr. Tobriner: Pardon me. The document speaks for itself, and unless Mr. Tillman is trying to go back prior to January 21, 1941, I submit the question is immaterial in so far as anything that happened prior to that date, I take it, is of no particular moment to us here.

Trial Examiner Lindner: I don't think it is. I think we should clear up for the record, however, when this witness first became a member of the Cannery and Food Process Workers Union.

(Testimony of Gus Cedar.)

Mr. Tobriner: I understood, Mr. Trial Examiner, he answered that by saying it showed in the book January 21, 1941.

Mr. Tillman: He did not answer.

Mr. Tobriner: I take it back. He said something about that. [48]

Mr. Tillman: He answered June 1945, before as when he first paid dues. Now I am trying to find out when he first learned of this union.

Q. (By Mr. Tillman): Can you tell us what month, what year that you learned that there was this other union besides Local 22382?

A. It was the month of June.

Q. What year?

A. 1945, the time that book was transferred.

Trial Examiner Lindner: Were you transferred directly from Local 22382 to this Cannery and Food Process Workers Union of America?

The Witness: That is correct, sir. Those stamps represent the dues I paid in 1945, including May 1945 that was paid in dues into Local 22382. Then I was transferred into this here Cannery Workers Union in June and started paying dues then, June 1945.

Trial Examiner Lindner: How did you learn of that Union in June 1945?

The Witness: How? Well, there was a meeting we had, and their affiliation was meant to be with the Seafarers Union.

Trial Examiner Lindner: You mean you had a meeting of Local 22382?

(Testimony of Gus Cedar.)

The Witness: Yes, and then it was understood it was [49] affiliation with the Seafarers Union, and for some reason which I can't explain, it didn't materialize and it finally swung into this here Cannery Workers Union. It all happened about the same time.

Trial Examiner Lindner: Without any affiliation with the Seafarers Union, is that right?

The Witness: Yes. You see, I was only a member of the Union, I had no official capacity at any time, I am not really in the know of what took place.

Mr. Tillman: I think that is all I have.

Trial Examiner Lindner: We will stake a short recess at this time.

(Whereupon a short recess was taken.)

Trial Examiner Lindner: The hearing is in session. Do you have any further questions of this witness?

Mr. Tillman: No questions.

Trial Examiner Lindner: Cross-examination.

Cross-Examination

By Mr. Agee:

Q. Mr. Cedar, you became a member of 22382 in the year 1940, is that correct?

A. That's correct.

Q. That was a union affiliated with AFL?

A. So I understand it was.

(Testimony of Gus Cedar.)

Q. You continued to be a member of that union and were a member of that union in 1944 when you first went to work for [50] the Capolino Company?

A. That's right.

Q. As far as you know at that time were all of the other employees of the company members of 22382?

A. As far as I know, yes.

Q. You remember, don't you, that in the spring of 1945 about the month of March, 1945, you first learned that there was a claim being made that the Teamsters were asserting jurisdiction over workers such as yourself, did you not?

A. That was the rumors.

Q. From then on the conflict in the Capolino Company among the battling unions, so to speak, was between Local 22382 and the Teamsters, was it not?

A. That's right.

Q. In other words, there was no CIO Union that was in there active and claiming representation?

A. No, sir.

Q. Commencing in March of 1945 and right down until you were informed by the Company that they had signed a contract with the Teamsters, there was a great deal of discussion among yourself and the other employees in the plant about this conflict between the two unions, was there not?

A. Between the Teamsters and Local 22382, yes, there was. I wouldn't say conflict, because everybody was against the [51] Teamsters.

Q. It eventually resulted, before you left the employ of the company, that some of the members had signed up with the Teamsters?

(Testimony of Gus Cedar.)

A. You will bear in mind that I didn't leave, I was fired.

Q. Well, you were fired, or your employment terminated. You knew that a number of the employees there at the company had signed up with the Teamsters? A. Yes.

Q. You kept saying all the time when you were questioned about what you were going to do, you kept saying you were undecided, is that right?

A. Yes, I was undecided.

Q. As a matter of fact, when you joined this Cannery & Food Process Workers Union of Modesto Area, you had made up your mind at that time, had you not, that you were not going to join the Teamsters? A. That's right.

Q. So that you continued on in the employment of the company and continued to state that you were still undecided, is that true?

A. And still undecided as to the Teamsters.

Q. As a matter of fact, during the month of June and up until the time your employment was terminated you were not undecided, you had already decided, had you not, to not [52] join the Teamsters Union?

A. Yes, under the present setup.

Q. Don't you recall an occasion either in the latter part of April or the first part of May 1945 when Mr. Capolino called you and all of the other employees together in the plant?

A. Yes, that's right.

(Testimony of Gus Cedar.)

Q. At that time there were no outsiders present, were there? A. There were no what?

Q. Outsiders present, nobody there except just Mr. Capolino and you and other employees of the company? A. That's right.

Q. By "outsiders," I mean organizers from any union or anything of that sort? A. No.

Q. Is it not a fact at that time Mr. Capolino said to you and these other workers in substance, "Men, I don't care who you join up with, I don't care if you join up with the devil himself, but I am trying to keep this plant open and in operation and you have to join up with somebody?"

A. That wouldn't be the correct substance of what he said, if I got it right. He said, "There is nothing else we can do," he said, "but to go with the Teamsters. If we don't they will stop delivery and we will all be out of work." [53]

Q. And he said something to the effect he wanted to keep the plant in operation and keep it going, isn't that true? A. That's right.

Q. Do you recall his making a statement along this line: "I don't care if you men join up with the devil himself?" A. No, I don't recall.

Q. You don't recall his using that expression?

A. No.

Q. About when was it that you were first told by the company that the company had signed up a contract with the Teamsters Union on May 18, 1945?

A. They never did tell me that directly.

(Testimony of Gus Cedar.)

Q. Did you get it indirectly?

A. Not in another manner except I heard through the other employees that the company had signed up with the Teamsters, had a contract signed up. But the company never told me directly nor did I ever see a contract.

Q. You yourself never had any dues deducted for payment by the company to the Teamsters, did you?

A. No, sir.

Q. When you had had dues deducted from your pay to be paid by the company to 22382, that was done with your voluntary authorization and consent, was it not?

A. That was decided on by the union.

Q. I mean, that was done with your consent?

A. It was.

Q. You were one of the employees that wanted to remain with Local 22382, is that correct?

A. That's right.

Q. You were one of the employees that wanted that union to be the bargaining agent to represent the workers with the company?

A. That's right.

Q. Up until the company signed this contract with the Teamsters on May 18, 1945, and I am repeating a little now, you say that all of the employees there in the company were members of 22382?

A. They were.

Q. And it was a requirement that all of the employees not only be members of 22382 but that they

(Testimony of Gus Cedar.)

remain in good standing with that union in order to remain employed there, isn't that correct?

A. I don't know that.

Q. Do you know of any employees there at the plant prior to—that is, I mean before the company signed up with the Teamsters on May 18, 1945, who were not members of 22382?

A. No, I don't know.

Q. Do you know of any employees of the company in that period who did not remain in good standing in 22382? A. No, I don't know. [55]

Q. So far then as you know, all of the employees up to May 18, 1945, were required to be members of 22382 and remain in good standing with that union?

A. Well, I couldn't possibly answer that in the affirmative because I was only a member, I have very little knowledge of the union itself, being no official of it, not even on the Council. So you see, there is a lot of things in the union I don't know.

Q. We are just asking for your knowledge. There were about 26 regular employees, were there not, at the plant?

A. I never counted them.

Q. Is that approximately right?

A. I guess that's right.

Q. That is, you classed yourself as a regular employee? A. Yes.

Q. Then, as I get the situation, Mr. Cedar, you were willing to go along with 22382 as long as the company recognized that union as the bargaining

(Testimony of Gus Cedar.)

agent, and you were willing to remain and keep your good standing in that union? A. Yes.

Q. Then when the company signed up a contract with the Teamsters you were unwilling to go along with the Teamsters and become a member in good standing with the Teamsters?

A. That's right.

Q. Was that your position irrespective of whether a majority [56] of the employees there at the plant signed up in writing with the Teamsters?

Mr. Tillman: I will object to that question.

A. I never give that——

Trial Examiner Lindner: Just a minute.

Mr. Tillman: It is immaterial, irrelevant.

Trial Examiner Lindner: I will sustain the objection.

Q. (By Mr. Agee): Did any of the fellow employees there at the company come to you and ask you or suggest to you that you ought to join up with the Teamsters? A. Yes.

Q. Can you name any of those employees who did that?

A. Well, the suggestion was made by Mr. McIsaac, if you want to call him an employee.

Q. Any other employees?

A. Well, I think that Mr. Stewart made the same suggestion to me.

Q. I am not talking about anybody except employees that were in the same sort of a situation that you were, in other words, just working there without anybody under them. Let us just talk about

(Testimony of Gus Cedar.)

those employees. You knew some of those employees had signed up with the Teamsters, didn't you?

A. I did.

Q. Didn't some of those employees come to you and ask you [57] to join up and join them in the Teamsters?

A. Not to my recollection.

Q. Do you know Mr. Dutton?

A. Yes.

Q. What was his job or position there with the company?

A. Mechanic.

Q. Did he have anybody under him?

A. Not to my knowledge.

Q. In other words, he was just an employee with no more authority than you have, is that right?

A. I guess that is just about right.

Q. Did Mr. Dutton come to you and discuss this thing with you?

A. Discussed it, yes, but I don't recollect ever asking me to join the Teamsters.

Q. While you were there in the plant and after you had joined up with this other union on—you say you joined this other union June 2, 1945?

A. You understand that that was a mass transfer from Local 22382 into this union. I haven't got the date of it except you can see that the date stamped in the book here as evidence.

Q. Before your employment was terminated on June 22, 1945, did you ask or urge any of the workers there in the plant not to join up with the Teamsters? [58]

Mr. Tillman: I object to that as immaterial.

Mr. Agee: It would show bias.

(Testimony of Gus Cedar.)

Mr. Tillman: His bias is immaterial.

Mr. Agee: It goes to the weight of his testimony.

Trial Examiner Lindner: I will overrule the objection. You may answer.

The Witness: Repeat the question, please.

Trial Examiner Lindner: Read the question, please.

(The question was read by the reporter.)

A. I made it plain to them that I took an independent stand and I didn't care what others done.

Trial Examiner Lindner: You made it plain to the employees that you talked with——

The Witness: To the employees, yes.

Q. (By Mr. Agee): In other words, no matter what they did you were not going to go along with the majority, is that right?

A. Not going to go along with the Teamsters.

Mr. Agee: All right, that is all.

Q. (By Mr. Tobriner): Mr. Cedar, you say you attended meetings of Local 22382, some of them held at Merced. During the course of those meetings is it not a fact that it was stated that the jurisdiction formerly exercised by 22382 had been assigned by the American Federation of Labor to the Teamsters? A. No, sir. [59]

Q. You never heard anybody say that?

A. No, sir.

Q. You never were told that by Mr. King in his statements to the press that you mentioned?

A. Mr. King was not present at any meetings in Merced.

(Testimony of Gus Cedar.)

Q. I am asking now at the time Mr. King came to the plant and Mr. Torreano and Mr. Brown at those various meetings that you have mentioned, and you say that they discussed this problem, during the course of the discussion and the argument don't you remember their ever saying at that time the American Federation of Labor had assigned jurisdiction or given jurisdiction or put the Teamsters in at this plant? Do you ever remember that?

A. There was no discussion, but somebody questioned Mr. King who he was working for because he was our Secretary-Treasurer, 22382 just shortly before, so he had identified himself to the extent of saying "I am now working for the Teamsters."

Q. Didn't he ever tell you—strike that.

You knew 22382 was a Local in the American Federation of Labor? A. Yes.

Q. You knew it was the so-called Federal Union, did you not?

A. I haven't got that altogether clear. [60]

Q. It was in the AFL? A. It was.

Q. You saw the newspapers and you heard the statements made by King and Brown and by Torreano and you knew what was going on generally, didn't you, in this whole picture?

A. Well, in reading the newspapers, as I say, I will say this: I don't always believe what I read in the newspapers.

Q. Hadn't you ever heard or hadn't it been told you that the AFL had decided the jurisdiction over the cannery workers at Capolino should go to the Teamsters?

(Testimony of Gus Cedar.)

A. Well, just like I said before, reading the newspapers and listening to everybody talking, nobody else but a fool would believe everything you hear.

Q. That's right, but didn't you hear King, Brown, or Torreano at some time during this period say that the AFL had said the Teamsters should take over for 22382?

A. I don't recollect that.

Q. You wouldn't say that it had not been said?

A. I talked very little to King or Torreano.

Q. But you have mentioned you went to four meetings at which this whole matter was discussed. I am asking you whether during all those four discussions whether anybody at any time ever said that the AFL had assigned jurisdiction or given jurisdiction to, or read that the Teamsters [61] should have jurisdiction over these workers?

A. There was a meeting held in Modesto and I think Mr. Tomson brought the question up when he came back from New Orleans.

Q. Didn't he go to New Orleans——

A. Beg your pardon?

Q. As a matter of fact, didn't Mr. Tomson go to New Orleans about this very matter?

A. I don't think so, not that I know.

Q. Didn't Mr. Tomson, when he came back, say that the Executive Council of the AFL had decided that the Teamsters should have jurisdiction?

A. No, sir.

(Testimony of Gus Cedar.)

Q. He didn't tell you that?

A. He said that a Mr. Beck had demanded that we go in with the Teamsters Union.

Trial Examiner Lindner: When was this?

The Witness: I couldn't fix the date, but that was some time—if you could tell me when Mr. Tomson came back from New Orleans—after that meeting they held at 1945, then I could tell you when it took place, but it must have been some time around March.

Mr. Tobriner: That's right.

Trial Examiner Lindner: That is the best of your recollection? [62]

The Witness: That is the best of my recollection.

Trial Examiner Lindner: When Mr. Tomson addressed a meeting of Local 22382 in Modesto, is that correct?

The Witness: Yes, that's correct. And the balance of the meeting ended up in a row between Mr. King and Mr. Tomson.

Q. (By Mr. Tobriner): At some time during this period you joined another organization, is that right?

A. Would you specify which one?

Q. Cannery and Food Process Workers Union of Modesto Area.

A. Yes, we were taken over, there was mass transfer, so we were all taken in to that new organization.

Q. You mention a mass transfer. That was not a mass transfer decided by the AFL, was it?

A. I don't know.

(Testimony of Gus Cedar.)

Q. You don't know what mass transfer that was, do you? A. I don't know.

Q. When did you yourself join this Cannery and Food Process Workers of Modesto Area?

A. When all the rest were transferred into it and I received the book here.

Q. May I see the book?

A. Yes. (Handing document to counsel.)

Mr. Tobriner: May we mark this for identification for the Teamsters, party to the contract? [63]

Trial Examiner Lindner: Will you have copies made of it?

Mr. Tobriner: If I may have this temporarily, I will have copies made.

Trial Examiner Lindner: With your permission, Mr. Witness, may Mr. Tobriner have that dues book temporarily?

Mr. Tillman: I was going to say, of course I will object to its offer eventually when you do offer it. Do you just want to mark it for identification?

Mr. Tobriner: At the present time.

I will mark for identification the book entitled "Cannery and Food Process Workers Union of Modesto Area" with a stamp on it "SIU," and then with the circle marked "Cannery and Food Process Workers Council of Pacific Coast," and ask that that be marked for identification Exhibit No. 1 on behalf of International Brotherhood of Teamsters.

(Testimony of Gus Cedar.)

Trial Examiner Lindner: That will be Teamsters' Exhibit No. 1.

(Thereupon the document above referred to was marked Teamsters' Exhibit No. 1 for identification.)

Q. (By Mr. Tobriner): This book as I show you, Mr. Cedar, shows that dues were paid in January, 1945, is that right, to this organization?

A. To which organization? [64]

Q. To the one that the book states.

A. No, these dues were paid into the old Local 22382 Modesto, and they were paid up inclusive of May, 1945. This is the transfer from the old 22382 book, you see, into this one showing that I was paid up in the old Local. That is the meaning of it.

Q. When were you initiated into this union, Cannery and Food Process Workers Union of Modesto Area?

A. I don't think there was initiation. It was just like I said, transferred over.

Q. Did you ever go to any meeting when a transfer was made of the membership of 22382 to Cannery and Food Process Workers Union?

A. I don't recollect it.

Q. There wasn't any meeting where a vote was taken by the members of 22382 to go into this union?

A. I don't believe I was present.

Q. Did Tomson give you this book?

A. No, that book was given to me by the Secretary, Jennie Quistini.

(Testimony of Gus Cedar.)

Q. She gave you this book?

A. She gave me this book.

Q. You paid dues to her, is that right?

A. I paid dues to her, right.

Q. You knew that Jennie Quistini was Secretary of Cannery [65] and Food Process Workers Union of Modesto Area, or an official of it?

A. She was not Secretary at that time.

Q. What was she?

A. She was clerk, I would call it. Mr. Tomson was still Secretary at that time.

Q. You knew at that time that 22382 of the AFL had another official as Secretary, did you not? Didn't you know that 22382 had other officials, that 22382 was in the hands of a man Dan Flanagan from the AFL?

A. Not to my knowledge.

Q. You didn't know 22382 was in receivership or trusteeship for the AFL and that Dan Flanagan was the trustee? You didn't know that?

A. They never informed me about it.

Q. You thought that this Cannery and Food Process Workers Union was 22382?

A. No.

Mr. Tillman: I object.

Trial Examiner Lindner: You object, Mr. Tillman?

Mr. Tillman: On the ground that the testimony is clear already as to what the witness meant by that book.

Trial Examiner Lindner: I will sustain the objection.

(Testimony of Gus Cedar.)

Q. (By Mr. Tobriner): When you paid dues to this Cannery and Food Process Workers Union of Modesto Area you knew, [66] did you not, that this was not Local 22382?

A. That much I knew when I paid dues the month of June. I knew then that we had been transferred in this Cannery Workers Union.

Q. 22382? A. No, transferred from.

Q. From 22382 to this? A. That's right.

Q. At that time didn't you know that Scientific Nutrition Company had a contract with 22382?

A. How would I know?

Trial Examiner Lindner: What time are you referring to?

Mr. Tobriner: The time he mentioned, June, 1945.

Q. (By Mr. Tobriner): At any time did you know Scientific Nutrition Company had a contract with 22382?

A. Yes, in 1944 we knew we had it. In 1945 we knew it discontinued the checkoff system. From there on I don't know what they had because, like I said, I was only a member of the union. I was in no position to know what they had.

Q. But you did pay these dues into this union, Cannery and Food Process Workers Union?

A. From June, yes.

Q. Did you know that this Cannery and Food Process Workers Union withdrew from SIU after that time some time in July? A. SIU? [67]

Q. Seafarers' International Union?

(Testimony of Gus Cedar.)

A. Yes, I know what you mean, but I understand it didn't materialize. They were trying to affiliate but didn't make the grade.

Q. Never did affiliate with SIU?

A. That is what I heard, not that I know.

Q. Did you ever tell any officials of Cannery and Food Process Workers Union or Seafarers' International Union, or make a claim that you had suffered any discrimination by this employer, did you yourself ever make any charge to this National Labor Relations Board or its officers as to any discrimination suffered by you from the employer?

A. I don't understand the wording of your statement.

Q. Did you ever complain to any official of the National Labor Relations Board that the employer had treated you unfairly, that Scientific Nutrition Company had treated you unfairly?

A. This discharge was given me by the company. I handed it in to the union.

Q. To which union? A. This union.

Q. Seafarers' International Union?

A. Not Seafarers. Whatever that is.

Q. Cannery and Food Process Workers?

A. Yes, it was handed in their office. [68]

Q. You never handed any such charge or complaint to any other union, did you?

A. No, sir.

Mr. Tillman: I will be willing to stipulate that we have a charge filed by the Cannery and Food Process Workers Union of Modesto Area.

(Testimony of Gus Cedar.)

Mr. Tobriner: I am not interested in your stipulation, Mr. Tillman.

Q. (By Mr. Tobriner): After this occurred, this trouble in June of 1945, an election took place, did it not? A. Which election?

Q. An election among the unions took place?

A. That was later, wasn't it?

Q. After June, 1945? A. Yes.

Q. Do you know whether or not the Cannery and Food Process Workers Union was on the ballot for that election? A. I believe it was.

Q. Did you make any request that that union object to the election because of any of these practices that you have mentioned here this morning?

A. No.

Q. You did not? A. No.

Q. The election was held, was it not? [69]

A. The election was held.

Q. Did you ever go back to the employer and ask for this job after the June 22nd date?

A. No, sir.

Q. You never returned?

A. Never returned.

Q. You are no longer a member of this Cannery and Food Process Workers Union, are you?

A. That discontinued.

Q. That discontinued?

A. As far as I am concerned.

Q. September or October some time?

A. Whatever date is there.

Q. There is no such union in existence now, is there? A. I couldn't prove it.

(Testimony of Gus Cedar.)

Trial Examiner Lindner: So far as you know there isn't any such union?

The Witness: No.

Q. (By Mr. Tobriner): You haven't been notified of any meeting?

A. That is locally. They may operate some other place.

Q. Have you been notified of any meeting of Cannery and Food Process Workers, Modesto Area?

A. No, sir.

Q. You haven't paid dues into it? [70]

A. Since——

Q. Since August, 1945? A. That's right.

Q. You don't know any officials who purport to act for it? A. No, sir.

Q. I see this card is signed by R. M. Tomson on behalf of Cannery and Food Process Workers Union of Modesto Area. Do you know where Mr. Tomson is now or what he is doing?

Mr. Tillman: I object to that as immaterial and irrelevant.

Trial Examiner Lindner: Sustained.

Mr. Tobriner: I want to show this organization is out of existence, unless counsel will stipulate to it. Here is the Secretary-Treasurer, I want to know what happened to him.

Trial Examiner Lindner: The witness already testified so far as he knows the Cannery and Food Process Workers Union of Modesto Area is not in existence at this time.

Q. (By Mr. Tobriner): So far as you know it

(Testimony of Gus Cedar.)

was not in existence after August, 1945, on the last date you have shown to pay any dues?

A. I won't fix the date, but that is the date whatever is stamped, that is the last time I paid dues into that particular union.

Q. You have had nothing to do with it since then? [71] A. No.

Q. These markings here showing payments for January, February, March, April and May of '45 are dues that were paid by you into 22382?

A. Correct, sir.

Q. After that time is it correct now that you thought in paying these subsequent dues you were carrying on with the organization that had succeeded to 22382?

A. Can anyone answer that question? I can't.

Trial Examiner Lindner: Do you understand the question?

The Witness: I understand the question, but I don't understand what answer you could give to it.

Q. (By Mr. Tobriner): You knew, did you not, that this was a different organization than 22382, this Cannery and Food Process Workers Union. Maybe that will get to it.

A. My comprehension of that thing, it would be like that was trying to carry on the old 22382 and still trying to make something out of it. That is the best answer I can give you.

Q. You knew 22382 had never been affiliated with the Seafarers' International Union. You knew that? A. They never did make it.

Q. Never were?

(Testimony of Gus Cedar.)

A. It tried but it never made it. [72]

Q. You didn't know, did you, that Cannery and Food Process Workers Union of Modesto Area got out of the AFL? A. I didn't know that.

Mr. Tobriner: I have no further questions.

By the way, I am going to ask that this be our Exhibit 1.

Trial Examiner Lindner: You offer that now?

Mr. Tobriner: Yes.

Trial Examiner Lindner: Will you have copies made?

Mr. Tobriner: I will have photostatic copies made, if I may have it, and return it to Mr. Tillman.

Mr. Tillman: Let the record show that I object to the offer as immaterial and irrelevant and already covered by the testimony.

Trial Examiner Lindner: Are there any other objections? Do you have an objection, Mr. Agee?

Mr. Agee: No objection.

Trial Examiner Lindner: Mr. Horie?

Mr. Horie: No objection.

Trial Examiner Lindner: I will overrule the objection and receive Teamsters Exhibit No. 1 in evidence, with the proviso that Mr. Tobriner can withdraw it to substitute photostatic copies in lieu of the original. Will you, Mr. Tobriner, return that card to Mr. Tillman so that he can return it to the witness, please? [73]

Mr. Tobriner: Yes.

(The document heretofore marked 'Teamsters' Exhibit No. 1 for identification was received in evidence.)

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(Testimony of Gus Cedar.)

Mr. Tillman: I have just one or two questions.

Redirect Examination

By Mr. Tillman:

Q. Mr. Cedar, you mentioned that at a meeting in March when Mr. Tomson came back from New Orleans, he made an announcement and the balance of the meeting ended up in a row between King and Tomson. What was the row about?

A. I don't know excepting it must have been about the job itself.

Trial Examiner Lindner: Just a moment, the witness answered, Mr. Tillman, that he didn't know. We don't want any of his thoughts.

Q. (By Mr. Tillman): Were you present at the meeting? A. I was.

Q. You don't know what the row was about?

A. I was told it was about the——

Mr. Agee: Just a minute.

Trial Examiner Lindner: Did you hear any part of the row that took place between these two men mentioned?

The Witness: No, sir.

Trial Examiner Lindner: You did not?

The Witness: No. [74]

Trial Examiner Lindner: Do you know of your own knowledge what the row was about?

The Witness: No.

Trial Examiner Lindner: Proceed.

Q. (By Mr. Tillman): Referring to this little booklet which has gone into evidence as 'Teamsters'

(Testimony of Gus Cedar.)

Exhibit No. 1 and shows stamped on there "Paid" for January, February, March, April, May 1945, as I understand your testimony you were given credit by the Cannery and Food Process Workers Union of Modesto for those months which you had paid dues into Local 22382? A. Correct.

Q. Did Jennie Quistini, did she ever succeed Mr. Tomson as Secretary of the Cannery and Food Process Workers Union? A. She did.

Q. Was she the last Secretary they had as far as you know? A. She was.

Mr. Tillman: No other questions.

Trial Examiner Lindner: Mr. Agee?

Mr. Agee: I have nothing further.

Trial Examiner Lindner: Mr. Tobriner?

Mr. Tobriner: No further questions.

Trial Examiner Lindner: Do you have any questions, Mr. Horie?

Mr. Horie: No questions. [75]

Q. (By Trial Examiner Lindner): Mr. Cedar, were all four meetings that you testified about which were held on the property of the plant, were they during the regular working hours of the day?

A. Yes, sir.

Q. Were they during your lunch period?

A. No.

Q. Were you paid for attending those meetings?

A. Yes, sir.

Q. You didn't lose any salary for having attended those meetings? A. No, sir.

Q. I would like to clear up the record on what

(Testimony of Gus Cedar.)

you testified to about a mass transfer from Local 22382 to the Cannery and Food Process Workers Union of Modesto Area. Was there a meeting held of the employees of the Capolino Packing Corporation at which time they signified that they were going to transfer from 22382 to the Cannery and Food Process Workers Union of Modesto?

A. Not to my knowledge.

Q. In other words, so far as you know you were a member of Local 22382 at the time you became employed by the company?

A. Yes.

Q. Until June, 1945, when you received the card in evidence [76] as Teamsters' Exhibit 1, at which time you became aware that there was a mass transfer from 22382 to the Cannery and Food Process Workers of Modesto, is that correct?

A. I don't know if I was ever notified directly, but I came up to the office and they took my book and they said "We will have to give you a new book."

Q. The office that you went up to, was that an office of Local 22382?

A. No, that was an office of the Cannery Workers Union which that book represents.

Q. I know that, but when you went up to the office in or about June, 1945, did you go up to the office of Local 22382?

A. No.

Q. Did you go up to the office of the Cannery and Food Process Workers Union of Modesto?

A. Yes.

(Testimony of Gus Cedar.)

Q. How did you know to go up there? Were you a member of that union?

A. During that time I had handed in my complaint about being discharged and I contacted our steward in Turlock and he said our new office was now the same address as that address that was on there.

Q. Mr. Witness, I think that you are probably a little confused about the dates. You were discharged on June 22, 1945? A. Yes.

Q. According to the dues book and according to your testimony you started paying dues to the Cannery and Food Process Workers Union of Modesto about June 2, 1945? A. Yes.

Q. So that you could not very well have given them a complaint about your discharge at the time you paid the dues?

Mr. Tillman: Mr. Examiner, if I might interrupt, I think it is 7/2/45 which would be July.

Trial Examiner Lindner: If I am mistaken I would like to correct it.

That is correct, Teamsters' Exhibit No. 1, Miss Reporter, indicates that in writing, dues were paid 7/2/45.

Q. (By Trial Examiner Lindner): Was it at that time, Mr. Cedar, that you gave this Cannery and Food Process Workers Union of Modesto Area your complaint about having been discharged?

A. No, my complaint was handed about a few days after, and at that time to my knowledge it was still 22382 with your office. I handed it in to our President.

(Testimony of Gus Cedar.)

Q. How many men were employed in the boiler room with you, Mr. Cedar?

A. At that time there was one regular man and then we had two other men helping out, so we were four, altogether. But at that time I was discharged, there were only two of us [78] in there.

Q. Only two at the time you were discharged?

A. Yes.

Q. Did you see or did you hear either Mr. King, Mr. Brown or Mr. Torreano solicit the other employee of the boiler room to join the Teamsters?

A. No, I didn't see it personally because when the meeting was over I rushed out of the warehouse.

Q. Did they come down to the boiler room and ask you to join the Teamsters?

A. No, Mr. Torreano contacted me in what we call the "Black Shop."

Q. Blacksmith shop?

A. Yes, what we called the "Black Shop" or machine shop, and Mr. King contacted me in the warehouse.

Q. Did you see them at any time contact any of the other employees?

A. Yes, at the first meeting that the Teamsters had they interviewed, I guess everybody. But like I said before, I didn't linger very long in the warehouse. I walked out.

Q. Did you hear what they said?

A. No, sir.

Trial Examiner Lindner: I have no further questions.

(Testimony of Gus Cedar.)

Recross-Examination

By Mr. Tobriner:

Q. Mr. Cedar, where did you pay these [79] dues for, let us say, March of 1945? How did you pay them? A. Shop steward.

Q. And April? A. Shop steward.

Q. May? A. Shop steward.

Q. June?

A. Paid that in the office of that particular union there.

Q. In June was that during the month of June?

A. That the dues were paid?

Q. Yes.

A. I am not sure of the date or the month, but it must have been the latter part of June.

Q. You went there in the latter part of June before you were discharged? A. After.

Q. After you were discharged? A. Yes.

Q. You went to which union? There were two unions, were there not, 22382 and this Cannery and Food Process Workers Union. You knew that, didn't you? A. Yes.

Q. Which one did you go to?

A. Cannery and Food Process Workers Union and paid those first dues which you see marked in that book. [80]

Q. You paid there?

A. Yes, and he took my old book, and like I said, stamped the dues I paid for the previous months, stamped it in and then wrote in.

(Testimony of Gus Cedar.)

Q. Previous to that time hadn't there been meetings of this Cannery and Food Process Workers Union? A. Yes, but I hadn't attended.

Q. You had not?

A. No, because we were supposed to have our meetings in Merced and I think they had two meetings as far as I recollect and I attended one of them.

Q. You did attend one meeting? A. Yes.

Q. Of the Cannery and Food Process Workers Union? A. Yes, but that was before June.

Q. Before June?

A. Oh, yes, I think it was probably the month of April or so.

Q. Did you have any card or anything to show that you were a member of the union besides this?

A. No, sir.

Q. Did you have any other document or other kind of evidence as to which union you belonged to?

A. No, sir.

Q. Did you tell Mr. Tomson or Miss Quistini that you considered yourself a member of Cannery and Food Process Workers [81] Union or of their union prior to June? A. No.

Q. You did not?

A. There is no answer to that. They never asked me about it.

Q. These discussions that you had at the plant to say whether you were a member of Cannery and Food Process Workers Union or 22382—

A. The discussion went no farther than that I refused or they refused to sign with the Teamsters. That is as far as the discussion went.

(Testimony of Gus Cedar.)

Q. You didn't attend the meetings of 22382 then, did you? A. When?

Q. During this time, May, June, July, or even before that, March, April, May, June?

A. I was at one or two meetings.

Q. Not all of the meetings? A. No, sir.

Q. So you don't know what went on at the meetings, of course, that you were not at? A. No.

Mr. Tobriner: Thank you.

Mr. Tillman: The record is still not clear as to whether or not this Cannery and Food Process Workers Union was in existence prior to the witness' discharge. I would like a [82] statement from the parties that we have a charge in the record, and if the parties won't stipulate this charge was filed by this particular union May 19, 1945, I will offer the charge in evidence.

Mr. Tobriner: Our position is that you served us with certain papers, and so that the record will be perfectly clear, the only charge I have ever seen is the third amended charge. If there are prior charges signed by other parties with different material in them, I would now object to any such change in this case.

Mr. Tillman: Perhaps you misunderstand my position. The complaint in this proceeding is based upon the third amended charge filed by the FTA-CIO that you have a copy of. I don't offer this in any way changing the pleadings, but merely to show that the Cannery and Food Process Workers Union of Modesto Area was in existence in May of 1945

(Testimony of Gus Cedar.)

to the extent that they were able to file charges with the Board.

Mr. Tobriner: I have absolutely no way of knowing if that is the fact; and secondly, if it is the fact, I don't see its materiality. We are here in answer to a third amended charge filed by the FTA-CIO by its attorney which narrates certain information. It is obvious, our position is, from what has been disclosed by this witness on the ground alone of what has been adduced, that this charge [83] would not stand up. This witness is not a member of FTA-CIO. The only organization of which he is a member he has already testified.

Trial Examiner Lindner: Just a minute, there has been no testimony whatsoever, so far as I can recall, that this witness either testified that he was or was not a member of the FTA-CIO.

Mr. Tobriner: Well, I will ask him just to make sure. I understood he said FTA-CIO isn't active at this time.

Q. (By Mr. Tobriner): You have never been a member of the FTA-CIO?

A. I have, from the time——

Mr. Tobriner: I will rephrase the question.

Mr. Tillman: I submit he was answering the question.

Q. (By Mr. Tobriner): Were you a member of the Food, Tobacco and Agricultural and Allied Workers Union of America, CIO in the month of January, 1945?

A. January, 1945?

(Testimony of Gus Cedar.)

Q. January, 1945. A. I was not.

Q. February, 1945? A. I was not.

Q. March, 1945? A. I was not.

Q. April, 1945? A. I was not.

Q. May, 1945? A. I was not.

Q. June, 1945?

A. June, I became a member of that——

Q. Cannery and Food Process Workers?

A. That's right.

Q. July, 1945, of the Food, Tobacco and Agricultural Workers? A. No.

Q. August, 1945? A. Which is the last?

Q. That is the last.

A. In September I became a member of FTA.

Q. In September, FTA. It was not at any time when these alleged actions of management in discharging you in June, July or August occurred—I mean June—strike that.

You were not a member of FTA-CIO in the month of June, 1945 when you, claim you were discharged? A. No, sir.

Mr. Tillman: I am still under the impression that you misunderstood my statement of this other charge. If there is some question in your mind, as there seems to be from the questions you have been directing to the witness, I merely want to establish that the Cannery and Food Process Workers Union was in existence before the date which Mr. [85] Cedar first paid dues in that little booklet, Exhibit No. 1. If you are going to argue from that booklet that the organization didn't come into existence

(Testimony of Gus Cedar.)

until after his discharge, then I will ask for your statement as to this charge I am going to offer.

Trial Examiner Lindner: Is that your position, Mr. Tobriner?

Mr. Tobriner: I didn't follow Mr. Tillman.

Trial Examiner Lindner: Is it your position the Cannery and Food Process Workers Union of Modesto Area was not in being until after the discharge of this witness, or was it an organization so far as you know, a labor organization prior to that time?

Mr. Tobriner: Frankly, I am not sure what Cannery and Food Process Workers Union was in June, 1945. I don't know their status. I know there was a group of people who talked about the Cannery and Food Process Workers Union. Whether it was this organization affiliated with SIU, I don't know.

Trial Examiner Lindner: Are you taking the negative position that it was not an organization at that time, a labor organization?

Mr. Tobriner: I am taking this position surely: First that it is not an organization now.

Trial Examiner Lindner: You mean as of the date of this hearing? [86]

Mr. Tobriner: Yes. As to the charge Mr. Tillman is talking about. I have never even seen it. I have no idea when it was filed.

Mr. Tillman: I offered to show it to you, and if you will stipulate on the date it was signed by Mr. Tomson who prepared it, it has his signature——

(Testimony of Gus Cedar.)

Trial Examiner Lindner: We will take a short recess at this time.

(Whereupon a short recess was taken.)

Trial Examiner Lindner: The hearing is in session.

Mr. Agee: I am willing to stipulate that on or about May 19, 1945, there was filed with the Board a charge by an organization, or entity styling themselves as "Cannery and Food Process Workers Union of Modesto Area" and purporting to be signed by R. M. Tomson, Secretary-Treasurer, and with the further stipulation that this charge just referred to has nothing to do with the charge now being heard before the Board.

Mr. Tobriner: I will stipulate to that with the further stipulation that this charge was dropped. That is correct, is it not?

Mr. Tillman: Yes, it is not the basis of this proceeding.

Trial Examiner Lindner: It is not the basis of this proceeding, Mr. Tobriner?

Mr. Tobriner: No complaint was issued on this charge?

Mr. Tillman: No complaint.

Trial Examiner Lindner: In other words, the stipulation we now have on the record goes to the issue of whether or not the Cannery and Food Process Workers Union of Modesto Area was an organization in May, 1945, is that correct, gentlemen?

Mr. Agee: That is my understanding.

(Testimony of Gus Cedar.)

Trial Examiner Lindner: Is that so stipulated?

Mr. Tillman: Yes.

Trial Examiner Lindner: Are there any further questions of this witness?

Mr. Agee: No.

Trial Examiner Lindner: You are excused, Mr. Witness. Thank you.

(Witness excused.)

Trial Examiner Lindner: We will recess for lunch at this time until 2 o'clock.

(Thereupon, at 12:35 o'clock p.m., a recess was taken until 2 o'clock p.m.)

After Recess

(Whereupon the hearing was resumed, pursuant to the recess, at 2 o'clock p.m.)

Trial Examiner Lindner: The hearing is in session. Proceed, Mr. Tillman.

Mr. Tillman: I will read into the record a proposed stipulation:

“In the matter of Bercut-Richards Packing Company et al, Cases Nos. 20-R-1414 et al, the Board directed elections among certain canneries including the Atwater, California plant of the Respondent.

“On October 16, 1945 the election directed at the Atwater plant was conducted. Three unions appeared as choices on the ballot in that election; namely, Cannery and Food Process

Workers Union of Modesto Area, affiliated with Cannery and Food Process Workers Council of the Pacific Coast; California State Council of Cannery Unions, American Federation of Labor; and Food, Tobacco, Agricultural and Allied Workers Union of America, CIO.”

Is that agreeable?

Mr. Agee: I will so stipulate.

Mr. Tobriner: So stipulated.

Mr. Agee: May I add at this time so we don't have to go back and proffer it, we would like to read into the record that in the election held which has just been referred to, that the California State Council of Cannery Unions, AFL, received 35 votes; the FTA-CIO, 22 votes, and the Cannery and Food Process Workers of Modesto Area, none; and that there were no challenged ballots, no void ballots, and further, in reference, you will refer to the Supplemental Decision of the Board?

Mr. Tillman: I refer only to the original decision.

Mr. Agee: I had better hold back this other. Unless you object, I would like to read a part of the Supplemental Decision of the Board in that same case dated February 15, 1946.

Trial Examiner Lindner: I will take judicial notice of the Board's decision in that case.

Mr. Agee: Very well. I didn't know that.

Mr. Tillman: I was wondering during the lunch hour whether we should indicate the case number of this charge which was filed to which we have a

stipulation which is not the basis for this proceeding. It has a different case number.

Mr. Agee: I don't see any purpose in that.

Mr. Tillman: All right.

I have nothing further at this time. The Board will rest.

Mr. Agee: Will you take the stand, Mr. McIsaac?

EDWARD EUGENE McISAAC

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Agee:

Q. Will you state your full name please?

A. Edward Eugen McIsaac. [90]

Q. By whom are you employed?

A. I am employed by the Scientific Nutrition Corporation at Atwater, California.

Q. Under what name is that company doing business at Atwater?

A. Capolino Packing Corporation.

Q. What is your position with the company?

A. I am Plant Superintendent.

Q. Mr. McIsaac, prior to May 18, 1945, with what union did the company deal in regard to the labor relations between itself and its employees?

A. Cannery Workers Union 22382 affiliated with the American Federation of Labor.

(Testimony of Edward Eugene McIsaac.)

Q. Prior to May 18, 1945, was it a condition of employment that every employee be a member of that union and maintain good standing in that union?

Mr. Tillman: I object to that question on the ground that the contract would be the best evidence.

Mr. Agee: He knows what it was.

Trial Examiner Lindner: Do you have a contract?

Mr. Agee: There was no contract in writing, was there?

The Witness: We only had the Master Contract.

Q. (By Mr. Agee): You mean the so-called "Green Book Contract" which is the collective bargaining agreement of the California Processors and Growers, Inc., is that right? [91]

A. That's right.

Q. Is the company by whom you are employed a member of that organization?

A. We are not.

Q. Will you answer the question?

Trial Examiner Lindner: I will overrule the objection. You may answer.

A. The employees coming under that contract were required to maintain good standing in the Cannery Workers Union.

Q. (By Mr. Agee): Prior to May 18, 1945, were all of the employees of the company members in good standing so far as you know with 22382?

(Testimony of Edward Eugene McIsaac.)

A. Those members that come under the contract, they were. I might explain there are certain members, supervisors and so forth that were not required to belong to the union. All others were required to belong to the union.

Q. Let me amend my question.

Prior to May 18, 1945, were all of the employees of the company who were eligible to membership in the union members in good standing of 22382?

A. To the best of my knowledge they were.

Mr. Agee: Counsel, we are having brought here and it will be here in a few minutes, and if we don't produce it you can move to strike it out, what pertains to a letter from the Teamsters directed to the company advising them in [92] substance that they had been designated as the body to have jurisdiction. Mr. White is waiting for it to be brought in.

Mr. Tillman: I have a copy of that letter.

Mr. Agee: Could we see a copy of that?

(The document was handed to counsel.)

Q. (By Mr. Agee): Would you take a look at this letter and read it over carefully and tell me then whether in your opinion that is a copy of the letter which the company received on or about May 8, 1945?

Trial Examiner Lindner: Are you going to get the original of the letter?

Mr. Agee: Yes, that is coming now. He didn't bring it in this morning.

(Testimony of Edward Eugene McIsaac.)

Trial Examiner Lindner: Is it your intention to introduce it in evidence?

Mr. Agee: Yes.

Trial Examiner Lindner: Will you mark this as an exhibit for identification?

Mr. Agee: I ask that it be marked for identification as Respondent's 1.

(Thereupon the document above referred to was marked Respondent's Exhibit No. 1 for identification.)

Q. (By Mr. Agee): Does that appear to you to be a correct copy of the original letter received by your company?

A. (Examining document): It does. [93]

Mr. Agee: Counsel, may we agree in substance that that letter purports to advise the company of the action of the Executive Council of the American Federation of Labor? [94]

Trial Examiner Lindner: The letter will speak for itself.

Mr. Agee: I think that is more or less preliminary.

Q. (By Mr. Agee): Was that letter the first written notice of any kind that the company had received so far as you know, concerning the claim of the Teamsters that they now had jurisdiction over the workers employed in your plant?

A. To my knowledge, it was.

Q. Up until that time, that is, up until the receipt of that letter had there ever been any claim

(Testimony of Edward Eugene McIsaac.)

communicated to the company by any union other than 22382 that it represented the workers as the bargaining agent? A. No, there hadn't.

Q. You were here this morning when Mr. Cedar testified, were you not? A. I was.

Q. You heard his testimony?

A. I did.

Q. Referring to a meeting of the employees at which Mr. Capolino spoke to them which Mr. Cedar identified as taking place the latter part of April or the first of May, 1945, can you specify the date of that meeting more exactly than that?

A. That took place on a Monday morning. I believe it was the second Monday in May. [95]

Q. Was that before or after the receipt of a letter which was marked for identification as Respondent's 1?

A. It was after receipt of this letter. I believe it was the following Monday after receipt of this letter.

Q. Were you present at that session?

A. I was.

Q. Was there anybody there representing management other than yourself and Mr. Capolino?

A. There was present there my assistant, Mr. Stewart, Warehouseman Mr. Spafford, and Mr. White.

Q. Where in the plant did that meeting take place?

A. It took place in our warehouse, near the warehouse office.

(Testimony of Edward Eugene McIsaac.)

Q. At the time that that meeting took place was the plant engaged in processing any food?

A. We were not.

Q. Then at that time were there any employees on the premises of the plant other than regular employees?

A. Only regular employees.

Q. Did all of the regular employees attend this meeting? A. They did.

Q. How many employees were employed by the plant at that time?

A. I believe there were twenty-six.

Q. Among those twenty-six employees was Mr. Cedar? A. He was one of them. [96]

Q. Do you recall whether he was there on that occasion or not?

A. He was present at that meeting.

Q. Will you state the substance of what was said, reciting by whom it was said and any replies made by anyone else?

A. The talking was done entirely by Mr. Capolino who was Manager of the plant. He gave the substance of this letter that is referred to as Respondent's Exhibit 1 and asked the employees to get together and decide what union they would like to affiliate with, that he was afraid this was going to lead to a lot of trouble and possibly shut the plant down; that all he was primarily interested in was to keep the plant running, that he did not care who they affiliated with or joined; if they joined up with the devil it would be all right with

(Testimony of Edward Eugene McIsaac.)

him. All he wanted was peace amongst his employees and to operate the plant.

Q. Did he at the time he made the statements have the original letter of May 8, 1945 in his hand or any other piece of paper?

A. He had this letter in his hand. He didn't read it word for word, he merely referred to it.

Q. Did any of the employees make any reply or any statements in reply?

A. There was discussion by several employees. I just don't recall, but the general attitude was they wanted a little time [97] to think it over. That was, it wasn't the purpose of that meeting to tell them what they were going to join. The purpose was to tell them about the trouble for them to look into it and decide what they wanted to join.

Q. Had the relations between the company and the union 22382 up to that time been entirely harmonious?

A. As near as possible for management and unions to get together, yes. We had our little differences which I think you will always find between management and unions.

Q. Were there any subsequent gatherings or meetings of the employees there at the plant when you were either present or in a position where you could hear what was going on?

A. You said "subsequent"?

Q. Yes.

A. On this same Monday we had just called our employees together and talked to them when re-

(Testimony of Edward Eugene McIsaac.)

representatives of the Teamsters Union, Mr. Torreano, Mr. King, Mr. Brown and two others whose names I don't recall, I never saw them after that, called at the plant in regards to this letter.

Q. Do you know whether they were requested to come there by anyone?

A. They were not requested.

Mr. Agee: Has anyone got a 1945 calendar so we can fix the date of this Monday?

Trial Examiner Lindner: Do you have a calendar? [98]

The Witness: I have '46. The second Monday would fall on the 13th, so in '45 it would have to fall on the 12th, wouldn't it?

Q. (By Mr. Agee): What am I getting at is this: How long after the company received that letter of May 8th, 1945, did Mr. Capolino communicate its contents to the workers?

A. This letter was received in the mail on Saturday prior to this Monday. The plant was not operating, the men were not in the plant at that time, so we had no opportunity to communicate the contents of this letter until Monday.

Q. So far as you know did anyone in the company have any prior warning or notice that these four men from the Teamsters were going to show up there at the plant that Monday?

A. None whatsoever.

Q. You say however, that they did actually show up about two hours after Mr. Capolino had this discussion?

(Testimony of Edward Eugene McIsaac.)

A. I would say approximately two hours after.

Trial Examiner Lindner: What time would that be?

The Witness: We had the men together about 8:30 in the morning. They went to work at 8 and we got them together. I would say around 10 or 10:30 in the morning.

Q. (By Mr. Agee): Just tell us from your own knowledge what happened when these Teamsters arrived.

A. Well, they presented themselves to the main office and were escorted into Mr. Capolino's office. He sent word out [99] in the plant for me to come up there. At that time they wanted to know what we intended to do about this. We informed them that until our workers in the plant so designated that they wanted the Teamsters to represent them, that we weren't going to do anything, that it was entirely up to our workers whom they wanted to choose.

They then asked if it would be all right if they could talk to our employees, and we told them it would be all right with us.

Q. Did they then leave the office?

A. No, I went out to the plant and passed the word amongst the workers for them to meet back in the warehouse, at which time I informed them that there were representatives of the Teamsters Union who would like to talk to them, but it was entirely up to them whether they wanted to listen to it. Whatever they wanted to do was entirely

(Testimony of Edward Eugene McIsaac.)

up to them. They could feel free to stay and listen to it or go on back to their work. It wasn't necessary for them to take any action, do anything, merely listen.

Q. Did you see or observe the employees gather in a group? A. I did.

Q. Where in the plant did they gather?

A. In the warehouse at the same place we had the other meeting.

Q. Were the Teamsters present? [100]

A. The five members of the Teamsters Union were present.

Q. Were you there?

A. I stood in the background.

Q. Did you participate in any way in the discussion?

A. Only at one occasion when I was asked. I was asked by the workers, the question came up whether we had a contract with Local 22382, and I told them that I wasn't in any position to answer that, that I had never seen a signed contract.

Q. Were you in a position where you could hear everything that went on during this discussion?

A. Well, after a few remarks by Mr. King and Mr. Torreano had given the general principles of this, the meeting more or less broke up into little groups, various workers talking to various members of the Teamsters Union, and with that I left. I didn't stay to overhear any of that.

Q. Before you left and while you were there

(Testimony of Edward Eugene McIsaac.)

in a position where you could hear, can you state the substance of what was said by King and Torreano and these other representatives of Teamsters, and what was said by the workers?

A. Mr. King introduced himself. The reason for that is he was known because he had been a business agent for the Cannery Workers Union 22382, and he told the workers that he was now working for the Teamsters Union and gave his reasons for going over to that, and stated why he thought the workers should affiliate with the Teamsters Union, the benefits they [101] would gain by it.

Mr. Torreano practically spoke along the same lines. I don't know the exact wording, I didn't pay too much attention to it.

Q. Coming to the next meeting that Mr. Cedar referred to, do you recall Mr. McIsaac, being in the Cooking Department of the company?

A. After we had signed the contract with the Teamsters I called the employees together to notify them that a majority of our workers had signed applications for membership in the Teamsters Union and that we had signed a contract with them and that from now on that we would operate under the Teamsters contract.

Trial Examiner Lindner: Can you fix the date of that?

Q. (By Mr. Agee): Can you tell us about when that took place?

A. I believe that was around May 18. I don't

(Testimony of Edward Eugene McIsaac.)

recall the exact date that contract was signed. It was the same date it was signed.

Q. Was it before or after the contract was signed?

A. It was after the contract was signed.

Q. What evidence if any was presented to you by the Teamsters to substantiate their statement that they represented a majority of the workers in the plant?

A. They presented the signed applications. [102]

Q. Did they do that on one occasion or more than one occasion?

A. On the day of the first meeting which was the second Monday in May, they presented signed applications for 13 of the members which was exactly one half of the membership. At that time they wanted a contract signed and we refused, saying that they would have to show us a clear majority before we would talk to them. So they went away and came back in about either two or three days later and presented, I believe it was either three or four more signed applications of employees of our plant which gave them a clear majority.

Q. When they came back the second time with these additional three or four signed applications did you accept that as final from them or did you demand anything else in writing from them?

A. We demanded a letter in writing stating that fact.

(Testimony of Edward Eugene McIsaac.)

Q. I show you a letter dated May 17, 1945, and ask you if pursuant to your demand that is the letter you got from the Teamsters Union?

A. (Examining document): This is the letter that was addressed to Mr. Capolino.

Mr. Agee: We offer this as Respondent's No. 2 in evidence.

(Thereupon the document above referred to was marked Respondent's Exhibit No. 2 for identification.) [103]

Trial Examiner Lindner: You didn't offer 1 in evidence. It is still marked for identification.

Mr. Agee: We are still hoping to get the original. If no objection is made on the ground that it is not the original, I will offer it in evidence.

Mr. Tobriner: No objection.

Mr. Tillman: I have no objection subject yet to looking at the original.

Mr. Agee: I am sure Mr. White will bring it before the hearing is over.

Trial Examiner Lindner: Under those conditions we will receive Respondent's Exhibit 1 in evidence.

(The document heretofore marked Respondent's Exhibit No. 1 for identification was received in evidence.)

(Testimony of Edward Eugene McIsaac.)

RESPONDENT'S EXHIBIT No. 1

[Letterhead]: Teamsters, Chauffeurs, Warehousemen and Helpers Union No. 386

May 8, 1945

Scientific Nutrition Corporation
Atwater, California

Attention Mr. Joseph Capolini

Gentlemen:

The following is the action of the Executive Council of the American Federation of Labor in a meeting held in Washington, D. C., on May 3rd, 1945.

"The following is the award of the Executive Council—it is the sense of this Council meeting that the interests of the American Federation of Labor would be protected and preserved in the canning industry in California, Washington, and Oregon by the transfer of the federal labor unions in that field to the Teamsters International Union and that the officers of the Federation be directed to cooperate with the Teamsters International Union in bringing about this result, and that the A. F. of L. cooperate in helping to organize the unorganized in this field."

By the above action the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Union of America inherit the agreement now in effect between your company and the

(Testimony of Edward Eugene McIsaac.)

American Federation of Labor and the Local Cannery Workers Union.

The International Brotherhood of Teamsters wish to advise you that we expect your company to immediately recognize only the Teamsters International Union as the representatives of your employees and in return the Teamsters International Union will live up to the agreement now in effect to the letter.

Would appreciate an answer by return mail, your position in this matter.

Yours truly,

/s/ H. L. WOXBURG,

Interation representative.

HLWg

Sp.Del.

Reg.

Trial Examiner Lindner: You are now offering Respondent's Exhibit 2 in evidence?

Is there any objection?

Mr. Tobriner: No objection.

Mr. Tillman: No objection.

Trial Examiner Lindner: There being no objection, Respondent's Exhibit 2 will be received in evidence.

(The document heretofore marked Respondent's Exhibit No. 2 for identification was received in evidence.)

(Testimony of Edward Eugene McIsaac.)

RESPONDENT'S EXHIBIT No. 2

[Letterhead]: Teamsters, Chauffeurs, Warehousemen and Helpers Union No. 386

May 17, 1945

Scientific Nutrition Corporation
Atwater, California

Attention: Mr. Joseph Capolino

Dear Sir:

This is to advise you that as of this date the Teamsters Cannery Workers Union of Modesto, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Union of America, holds within its membership the majority of the employees of your company.

By virtue of this membership, we are hereby requesting that you immediately sign the enclosed recognition agreement. We also request that you immediately advise all new employees who are now employed or may hereafter be employed, that they must become and remain members of the Teamsters Cannery Workers Union.

For the purpose of avoiding any confusion, we request that you honor and recognize the check-off system in your company covering Initiation Fees, Dues and Assessments upon receipt of signed authorization by the employees.

Yours truly,

/s/ H. L. WOXBERG,

International Representative.

HLM:g

(Testimony of Edward Eugene McIsaac.)

Q. (By Mr. Agee): Following the receipt of the letter of [104] May 17, 1945 in evidence as Respondent's No. 2, did the company enter into a signed contract with the Teamsters?

A. They did.

Q. I hand you this document and ask you if that is the Agreement you have just referred to?

A. (Examining document): It is.

Mr. Agee: Counsel, that is the original, an exact copy of which is attached to my answer, and I picked these things up late last night and had no extra copies. I had six of them made.

May we stipulate that it either be read into the record or that the attached copy which is attached to our Answer will be used for all purposes as though the original were here?

Mr. Tillman: Yes, that is agreeable.

Mr. Agee: We will leave the original there for your inspection.

Trial Examiner Lindner: The copy of the contract which is attached to your Answer was the contract signed by the Respondent with the Teamsters Union on May 18, 1945, is that correct?

Mr. Agee: That is correct.

Q. (By Mr. Agee): In that Agreement where the contract refers to the Master Agreement between the California Processors and Growers, Inc., and the American Federation of Labor and [105] the California State Council of Cannery Unions, did you have reference to the so-called "Green Book Contract" that has previously been mentioned here? A. Yes.

(Testimony of Edward Eugene McIsaac.)

Q. You are familiar generally with Section 3 of that Master Agreement in regard to the conditions under which employees are to be employed and retained in the employment of the company?

A. I am.

Q. I hand you a letter dated June 22, 1945, and ask you if the company received that letter on or about the date it bears?

A. (Examining document): I did.

Q. Between the signing of this contract, May 18, 1945, and the receipt of that letter dated June 22, 1945, did the company operate in accordance with the terms and provisions of the Agreement of May 18, 1945?

A. We did.

Q. Did the company during that time and up until the receipt of this letter of June 22, 1945, receive any request or demand from the Teamsters Union in regard to the failure of any of the employees to join up as a member of the Teamsters Union?

A. We received no request, only verbal warnings they would have to join or leave our employ. [106]

Q. What was the name of the man connected with the Teamsters Union that communicated to that effect with the company?

A. Well, it as both Mr. King and Mr. Torreano.

Q. On that date at least, or at this time so far as you know, they were then affiliated and acting for the Teamsters Union, were they?

A. They were.

(Testimony of Edward Eugene McIsaac.)

Mr. Agee: I would like to offer that letter in evidence as Respondent's Exhibit 3.

(Thereupon the document above referred to was marked Respondent's Exhibit No. 3 for identification.)

Trial Examiner Lindner: Any objection?

Mr. Tillman: No objection.

Trial Examiner Lindner: There being no objection Respondent's Exhibit 3 is received in evidence.

(The document heretofore marked Respondent's Exhibit No. 3 for identification was received in evidence.)

RESPONDENT'S EXHIBIT No. 3

[Letterhead Cannery Warehousemen, Food Processors, Drivers & Helpers Local 748]

June 22, 1945

Scientific Nutrition Corporation
Atwater, California

Attention: Mr. McIsaac

Dear Sir:

In accordance with the terms of the agreement between your company and Local 748 this letter will serve as a notice to your company to terminate the employment of Gus Sedar.

This man has refused to become a member of this

(Testimony of Edward Eugene McIsaac.)

union and under the terms of our contract he is subject to dismissal. We have given Gus Sedar (30) days in which to make up his mind about joining this Local, which is (20) days more than the time stipulated in the contract. Therefore, we ask his immediate dismissal upon receipt of this letter.

Very truly yours,

[Seal] /s/ H. C. TORREANO,
Representative.

HCT:BG

Q. (By Mr. Agee): Following the receipt of this demand contained in the letter of June 22, 1945, and pursuant to the terms and provisions of the Agreement of May 18, 1945, did your company through you discharge Mr. Cedar?

A. We did.

Q. What individual in your company communicated that to him? [107]

A. I communicated it to him.

Q. Did you have any reason for discharging Mr. Cedar other than the fact that you had received this demand contained in the letter of June 22, 1945?

A. No other reason.

Q. Before—withdraw that. Do you recall an occasion when you and Mr. Cedar had a discussion in your office?

A. I do.

Q. Did that discussion—withdraw that. Was that a discussion that was referred to by Mr. Cedar in his testimony this morning?

A. It was.

(Testimony of Edward Eugene McIsaac.)

Q. Having that in mind, did that discussion take place before or after May 18, 1945?

A. It took place after the signing of the contract, yes, about two weeks after.

Q. So that would place it about the latter part of May or the first or second day of June, is that correct?

A. That is right.

Q. Was anyone present in your office other than you and Mr. Cedar?

A. There was no one.

Q. Can you recall the circumstances under which you and he happened to be there together?

A. I don't recall just what brought him there, but while he came in I believe it was something pertaining to the boiler room—while he was there I asked him whether he had made up his mind whether he was going to join the Teamsters or not, and he said he hadn't.

I said, "They are getting pretty tough with me. They are making demands that I let you go." I said, "I don't want to lose a good boilerman. I hoped you would make up your mind one way or the other. You are causing me to have to let you go."

Q. At that time that you had that conversation with him had you already received verbal demands regarding various employees from either Mr. Torreano or Mr. King?

A. I had.

Q. Following the contract of May 18, 1945, did the company deduct the dues from the pay of the employees and deliver those deductions to the Teamsters Union?

(Testimony of Edward Eugene McIsaac.)

A. I went to work on January 1st, 1945, and during that time I believe that all the dues were collected by the shop steward.

Q. Up until what time?

A. They were not deducted.

Q. Up until what time?

A. Up until the signing of this contract.

Q. That was paid then to what union up until the signing [109] of the contract?

A. It was collected for the Cannery Workers Union 22382.

Q. My question was: After this Agreement of May 18, 1945, did the company deduct dues from the workers' pay and turn it over to the Teamsters Union? A. We did.

Q. That continued up until what date?

A. That continued up until March 1st, 1946.

Q. That is when this contract expired, is that correct? A. That is right.

Q. Since March 1st, 1946, has the company entered into any kind of a contract with the Teamsters Union or any other union?

A. We have not.

Q. Did the company ever exclude any representative from the premises of the plant regardless of what union he was representing?

A. Is there any specific time?

Q. To your knowledge at any time.

A. Prior to the signing of this contract both representatives of Cannery Workers Union and Teamsters Union were permitted to come into the plant.

(Testimony of Edward Eugene McIsaac.)

Q. Did those representatives actually come on to the premises of the plant?

A. The Cannery Workers Union was in there almost every day. [110]

Mr. Tillman: Just so the record will be clear, when he says "Cannery Workers Union," that is Local 22382.

The Witness: That is what I referred to.

Q. (By Mr. Agee): You say they were there almost every day?

A. That is right. The Teamsters had never been in there that I recall prior to that original meeting.

Q. That was during all of this period in which the struggle was going on between 22382 and the Teamsters for control of the workers?

A. That's right.

Mr. Agee: What is the practice? Do you always introduce the original document?

Trial Examiner Lindner: Yes.

Mr. Agee: We ask that this replace the exhibit previously marked as Respondent's Exhibit 1.

Trial Examiner Lindner: Yes, unless you want to keep that correspondence.

Mr. Agee: I would like to keep it if I can.

Trial Examiner Lindner: If Mr. Tillman doesn't have any objection, I will allow the substitution of copies for the original.

Q. (By Mr. Agee): What were the initials of Mr. Capolino?

A. He signed his name "J. Capolino."

(Testimony of Edward Eugene McIsaac.)

Q. You were familiar with the record and the correspondence in general of the company, were you, during this period of [111] May 1945?

A. In regards to his relations with the union, yes.

Q. Did you see the original of the letter that Mr. Capolino sent in reply to this letter of May 8, 1945?

A. He showed me a copy of it. I didn't see the original, I saw the copy.

Q. Could you take a look at a copy dated May 9, 1945, and see whether you recognize that as a copy of the original?

A. (Examining document): That is the letter.

Mr. Agee: I have no further questions.

Trial Examiner Lindner: Are you offering that letter into evidence?

Mr. Agee: No, I simply have it here for inspection. I have no additional copies. It really just acknowledges, but for what it is worth I have it here.

Trial Examiner Lindner: Very well.

Mr. Agee, my reading of this Agreement signed between the Scientific Nutrition Corporation and the International Brotherhood of Teamsters on May 18, 1945, refers to the Master Agreement between the California Processors and Workers, Inc., and the American Federation of Labor.

Mr. Agee: That is correct.

Trial Examiner Lindner: And the California State Council of Cannery Unions.

(Testimony of Edward Eugene McIsaac.)

Are you going to introduce that document? [112]

Mr. Agee: The Board has a number of these and I only have two. That is the trouble, they are getting very scarce. They have been in every hearing that has ever been held that this thing has come in. Isn't that correct, Mr. Tillman, that you have copies in your office?

Mr. Tillman: I didn't take part in the representation proceedings.

Mr. Tobriner: It has been introduced, to my own personal knowledge, now in six hearings so there are now twenty-four of them.

Mr. Agee: The last hearing we had in the case in Modesto, that has no bearing on this of course, but the arrangement there was that all parties agreed that they had enough copies of this around so they didn't have to introduce it.

Trial Examiner Lindner: All right. You may cross-examine, Mr. Tillman.

Mr. Tillman: Mr. Tobriner, do you have any questions first?

Mr. Tobriner: No questions.

Cross-Examination

By Mr. Tillman:

Q. Mr. McIsaac, you testified that prior to this May 18, 1945, contract with the Teamsters that the employees of the Capolino Company were required to maintain good standing in Local 22382?

A. Yes. [113]

(Testimony of Edward Eugene McIsaac.)

Q. Did you ever fire anyone or was anyone ever fired during the time that you were employed there because he failed to maintain good standing in Local 22382? A. Prior to that time?

Q. Yes.

A. No, there was no one ever fired.

Q. Did you say you first went to work for the company January '45? A. January 1, 1945.

Q. Your conclusion that the employees were required to maintain good standing in Local 22382, could you tell us what that is based upon?

A. Based upon the original contract, I believe, that was signed by Mr. Capolino in 1941 when it first was organized.

Q. Was that a contract which was a separate document from the contract in which the CP&G entered into contract with the AFL?

A. It was a separate document but purporting to recognize everything that was in the contract, the master contract.

Q. So the basis for the requirement of maintaining membership would have to be found in this CP&G contract, is that right?

A. That is right.

Q. The letter of May 8, 1945, Respondent's Exhibit No. 1 which was directed to the company advising the company of the [114] jurisdiction of the Teamsters, was that letter posted by the company?

A. Yes, I believe it was.

(Testimony of Edward Eugene McIsaac.)

Q. Where was the letter posted?

A. It was posted in an area between the Cook Room and the warehouse where most of the boys would congregate during their rest periods, on the bulletin board.

Q. Was that letter posted before this meeting on the second Monday in May or when the letter arrived or afterward?

A. It was posted immediately after. The original letter wasn't, it was a copy of the letter.

Q. A copy was posted? A. Yes.

Q. That would be before the meeting at which Mr. Capolino spoke?

A. Well, I wouldn't want—I don't recall. It may have been before or after. I believe it was right after, though.

The reason for doing it was so the employees could read this letter and see for themselves what we had received.

Q. In your position as Plant Superintendent was it customary that you see all correspondence that came in to either Mr. Capolino or the plant?

A. When you refer to "all correspondence" do you mean everything, all correspondence coming to the Plant, or relative to labor relations? [115]

Q. Well, all correspondence which had reference to the Plant, I mean, excluding personal correspondence?

A. Well, anything pertaining to production of the plant and production end of it and labor relations, yes, I had access to that.

(Testimony of Edward Eugene McIsaac.)

Q. Do you remember that the company received a letter from Mr. Tomson in or about May 1945 advising Mr. Capolino that the Cannery and Food Process Workers of Modesto Area represented his employees? A. What date?

Q. In the month of May.

A. I recall something about the Seafarer's Union, they were affiliating with the Seafarer's Union to represent them.

Mr. Tillman: I will ask that this be marked for identification Board's Exhibit 3.

(Thereupon the document above referred to was marked Board's Exhibit No. 3 for identification.)

Q. (By Mr. Tillman): I will show you a copy of Board's Exhibit 3 for identification and ask you if you ever saw that before?

Mr. Tobriner: In order that I may be in a position to object to this letter if I think that necessary, is it possible for me, Mr. Tillman, to please see the charge that was filed on behalf of Cannery and Food Process Workers Union? [116] You showed it to me this morning. I think it was filed May 19.

Mr. Tillman: I will be glad to show you the charge as soon as the witness answers that last question.

The Witness: What was the question?

Trial Examiner Lindner: Read the question please.

(The question was read by the reporter.)

A. I saw this letter.

(Testimony of Edward Eugene McIsaac.)

Q. (By Mr. Tillman): Was it received by the company on or about the date it bears?

A. I would say on or about that date.

Mr. Tillman: The record should show that I am showing Mr. Tobriner the charge he requested.

I will offer Board's Exhibit 3 in evidence.

Mr. Agee: I have no objection.

Trial Examiner Lindner: Mr. Tobriner, do you have any objection?

Mr. Tobriner: I object on the ground that the Regional Office of this Board on the basis of this letter was given a charge signed by the same person who signed this letter, the charge being dated as filed on May 19, 1945, a charge that the company "interfered with, restrained and coerced its employees in the exercise of their rights guaranteed under Section 7 of the National Labor Relations Act."

I refer to the statement this morning by Mr. Tillman that this charge was dropped and no complaint was issued on it. In view of the action of the Board and the basis of this charge filed by Mr. Tomson, signatory of this letter, I fail to see how any action that Mr. Tomson took notifying this company of alleged but evidently spurious claims can now be used by this Regional Office one year later as the basis for its contention in this case.

Mr. Tillman: My answer to that would be there was some testimony by the witness that the company had no notice of any other union making a claim.

(Testimony of Edward Eugene McIsaac.)

Mr. Agee: No, I said the company never had notice of any other union making a claim other than 22382 and Teamsters, and it was a conflict between those two.

Mr. Tillman: This is a third union.

Mr. Agee: You have to go into that with the witness to be fair to him, whether he distinguishes between this union and Local 22382. He may consider them identical.

Trial Examiner Lindner: Do you object to this?

Mr. Agee: In view of what counsel just stated, yes. I think at this time it should be first established this witness realized any difference between 22382 and the writer of this letter referred to.

Mr. Tillman: You can do that on redirect examination.

Mr. Tobriner: May I point out it does not bear out Mr. Tillman's consideration. It says that in the exercise of [118] their legal rights they have organized themselves under the name of Cannery and Food Process Workers' Union of Modesto Area. And "this labor union exists under and by virtue of charter issued to it by Cannery and Food Process Workers' Council of the Pacific Coast. This Council is prepared upon request of the Local Union to represent the Local Union and the employees in your plant in collective bargaining matters. Until such request——"

Trial Examiner Lindner: Just a moment. I will overrule both of your objections and receive the letter in evidence.

(Testimony of Edward Eugene McIsaac.)

Mr. Tobriner: Pardon me, Mr. Trial Examiner, but I would like to complete my argument.

Trial Examiner Lindner: You are just reading from the letter.

Mr. Tobriner: I was reading to base an argument on it. I think for the purpose of the record that should go into the record.

I point out this letter does not bear out the contention made for the following reasons: The letter merely states that another union called Cannery and Food Process Workers' Union of Modesto Area had made a request to a certain Council that the Council would be prepared to represent the employees in collective bargaining matters. If the Trial Examiner will note the letter with care, it will become evident that it says "that until such request is made"—and there is no statement that the request was made—"the Local Union is an autonomous organization"—and then there is a period. I am not quite sure what that means. Until the request is made, there is no showing that this Local Union is the collective bargaining agency, or the Council, I should say, is the collective bargaining agency.

There is no showing here a request was made by the Local Union to the Cannery & Food Process Workers' Council that the Council was to represent these employees.

Trial Examiner Lindner: Are you contending that this letter was sent to the respondent by the

(Testimony of Edward Eugene McIsaac.)

Cannery and Food Process Workers' Council of the Pacific Coast to represent the employees in the plant?

Mr. Tillman: I contend that it was sent by the Local from the Modesto area for that purpose, and that as the letter indicates, the Local in Modesto area was affiliated with the Council, Pacific Coast Council.

I think Mr. Tobriner's argument, of course, is argument as to the intent of the letter which he can reserve for some other time.

Mr. Tobriner: Is it your contention that Council now is a representative of the employees—if I may speak to counsel, Mr. Examiner.

Trial Examiner Lindner: That is what I asked Mr. Tillman. Is it your contention that at the time this letter was sent [120] that this organization represented the respondent's employees as collective bargaining agent?

Mr. Tillman: No, I don't go that far. I merely go to the extent of showing that the company was put on notice of the claims of another union.

Trial Examiner Lindner: That is what I thought.

I will overrule your objection as I did previously, and receive the letter in evidence.

(The document heretofore marked Board's Exhibit No. 3 for identification was received in evidence.)

(Testimony of Edward Eugene McIsaac.)

BOARD'S EXHIBIT No. 3

[Letterhead Cannery Workers']

May 11, 1945

Scientific Nutrition Corporation
c/o Capolino Packing Corporation
Atwater, California

Att: Mr. J. Capolino

Gentlemen:

It is our information that you have been requested to make arrangements to substitute the Teamsters' Union for the California State Council of Cannery Unions in our Collective Bargaining Contract.

This letter is to advise you that the person or persons making that request were without any legal authority whatsoever. They do not represent the employees in your plant and so far as we know no representative group of employees have requested them to act as their bargaining agent.

You are further advised that an effort has been made by certain international officers of the Teamsters' Union to transfer all members of Local 22382 to that Union without regard to the wishes of the members. They have had the apparent support of the Executive Council of the American Federation of Labor. As a result of this activity the employees involved have terminated their membership in Local 22382 and have in the exercise of their legal rights,

(Testimony of Edward Eugene McIsaac.)

organized themselves under the name of Cannery and Food Process Workers' Union of Modesto Area. This labor union exists under and by virtue of charter issued to it by Cannery and Food Process Workers' Council of the Pacific Coast. This Council is prepared upon request of the Local Union to represent the Local Union and the employees in your plant in collective bargaining matters. Until such request is made and until you are advised to the contrary, the Local Union as an autonomous organization, is the representative in collective bargaining matters of all the employees in the plant except supervisory employees.

We shall be pleased to meet with you or your representative for the purpose of discussing our Collective Bargaining Agreement.

Very truly yours,

CANNERY AND FOOD
PROCESS WORKERS'
COUNCIL OF THE
PACIFIC COAST.

/s/ R. M. TOMSON.

reg. mail

return receipt requested

(Testimony of Edward Eugene McIsaac.)

Q. (By Mr. Tillman): What was Mr. White's position at the company back in May 1945?

A. Mr. White was brought into the plant to gain knowledge as to its management because Mr. Capolino knew at that time that he was going to retire at the end of the year. Unfortunately, he died before he had an opportunity to retire.

At the time Mr. White's capacity was, let us say Assistant Manager to Mr. Capolino.

Q. What is his position today?

A. Manager.

Q. At this meeting, the second Monday in May, at which Mr. Capolino spoke, you testified that one of the matters that Mr. Capolino stated was that the employees should get together and decide which union to affiliate with, is that [121] correct?

A. That is right.

Q. Can you tell us what he meant by "decide which union to affiliate with?"

A. There had been so much discussion, we have had these various letters that have been presented here, first one union and then another. Local Cannery Workers 22382 had been—their office had been closed on a court order, everything was pretty much in confusion who had control of the canneries.

We had these demands by the Teamsters. First Tomson had tried to get into the Seafarers. I believe it was, and they were working from that angle. Then they formed this other union. Everything was in so much confusion that after a trivial discussion between Mr. Capolino and myself we

(Testimony of Edward Eugene McIsaac.)

decided the best thing was to put the issue before the employees, tell them to make some decision so we could get down and operate our plant reasonably.

Q. Did you have some specific unions in mind that they should make up their mind about?

A. You heard my testimony. He said they could side up with the devil, that would be all right with him.

Q. At this meeting in the Cooking Department where you called them together and announced that the company had signed a contract with the Teamsters, did you show the contract to the employees at that time? [122]

A. No, I never.

Q. Did you ever show the contract to them?

A. The contract was shown a day or so later. The union man came in there, that is Mr. King, Mr. Torreano and Mr. Brown, and asked permission to talk to the employees, and it was after the contract was signed and we requested them to wait until the 10 o'clock rest period and talk to them during that time. At that time they showed the signed contract to the employees.

Q. The Teamster representatives did?

A. They did.

Q. Was that contract ever posted at the plant?

A. No, not to my knowledge. We had only this one copy here.

Q. Did you ever post any notice that the employees could see the contract?

(Testimony of Edward Eugene McIsaac.)

A. Will you state that again?

Q. Did you ever post any notice to the effect that the employees could see the contract?

A. No, we never.

Q. You testified that the Teamsters came around on the second Monday of May with the 13 application cards. Were these cards presented to the company before this meeting at which Capolino spoke?

A. You mean the first meeting referred to?

Q. Yes.

A. No, it was after that meeting.

Q. Was it the same day or several days later, or what?

A. It was the same day. They came in later in the day and asked permission to talk to the employees.

Q. You testified they came in around 10 or 10:30. A. That's right.

Q. Did they have the cards at that time when they came in? A. They had application blanks.

Q. They were already filled out when they came into the plant? A. I don't know.

Q. They had blank cards?

A. I wouldn't want to answer that, I don't know.

Q. Just when was it that they offered the 13 cards?

A. About 2 o'clock in the afternoon.

Trial Examiner Lindner: Was that after they had seen the employees in the plant?

The Witness: Yes, that's right. They had talked to them.

(Testimony of Edward Eugene McIsaac.)

Q. (By Mr. Tillman): Did you examine the cards to the extent that you would know what the wording was on any one of them?

A. Oh, I would recognize the contract if I had seen it. It merely states they were asking to affiliate with the [124] Teamsters, Chauffeurs and Warehousemen. I don't remember the exact words.

Q. That is what I had in mind, what union was stated on the application.

Did you sit in on the negotiations which resulted in that May 18 contract?

A. I did not. Mr. Capolino took care of all that.

Q. Did you have any part in checking the cards presented by the Teamsters with the payroll, or anything like that?

A. I did.

Q. When was that check made.

A. About four days, I would say after. Three or four days after the first meeting.

Q. What cards did you check, the 13 that they had presented on the second Monday in May?

A. The original 13, we told them we couldn't accept that because it was only 50 percent. Unless they could present a clearcut majority of our regular employees, we couldn't negotiate with them.

Q. Did they leave the 13 cards with you?

A. No, they didn't. They brought them all back in one group.

Q. This was four or five days later they came back with a new batch?

A. Three or four days later.

(Testimony of Edward Eugene McIsaac.)

Q. At that time you made a check of the cards?

A. I witnessed all those signatures. We checked the signatures with the signatures we have on our applications the employees make when they come to work for us.

Trial Examiner Lindner: When you say you witnessed them, you mean you checked them yourself?

The Witness: We checked them. I checked them with the payroll department.

Trial Examiner Lindner: Did you do that yourself?

The Witness: Yes.

Mr. Tillman: I believe that is all.

Redirect Examination

By Mr. Agee:

Q. For the sake of clearness, this morning when Mr. Cedar was testifying they referred to meetings one, two and three. Do you have those events in your mind now?

A. I believe meeting one refers to the meeting with Mr. Capolino and the employees with no union representatives present.

Q. That's right.

A. Meeting number two refers to the meeting about two hours later with representatives of the Teamsters Union.

Q. Yes.

A. Meeting number three, I believe, refers to the meeting that I had with them in the Cook Room

(Testimony of Edward Eugene McIsaac.)

informing them, verbally informing them that we had signed a contract with the [126] Teamsters Union.

Q. Right.

I am just interested in the time that consumed. You just mentioned a few minutes ago meeting number three took place during a rest period of approximately ten minutes, is that correct?

A. That would really be meeting number four when the representatives of the Teamsters Union came in and went out during the rest period and showed the contract to the employees and informed them they were now being represented by the Teamsters Union.

Q. Then for the moment let us go back to meeting number one. About how much time did that take?

A. Ten to fifteen minutes.

Q. Was that during working hours?

A. It was about 8:30 in the morning.

Q. Were the employees paid for that time that they spent in attending this meeting?

A. They were.

Q. Meeting number two took about how long?

A. I would say about one half hour.

Q. Was that during regular working hours?

A. Well, it took in part of their rest period and some of the working time.

Q. Meeting number three took how long?[127]

A. Oh, two or three minutes.

Mr. Agee: That is all.

(Testimony of Edward Eugene McIsaac.)

Trial Examiner Lindner: Do you have any questions?

Mr. Tobriner: No questions.

Q. (By Trial Examiner Lindner): Did you testify just a minute ago that the representatives of the Teamsters notified the employees that the contract had been signed with them?

A. They did.

Q. Did either yourself or Mr. Capolino so notify the employees?

A. I had notified them prior to that, yes.

Q. You had notified them prior to that?

A. In what we refer to as meeting number three.

Q. You testified, Mr. McIsaac, that at the first meeting that was addressed by Mr. Capolino——

A. I didn't quite catch that.

Q. You testified that at the first meeting which was addressed by Mr. Capolino, that mention was made that the company was afraid that there would be a lot of trouble, is that correct?

A. That's right. There was so much conflict between these various union factions we were afraid it might end up in a union war and close our plant.

Q. How many union factions were there at that time? [128]

A. Well, they had the original Local 22382; groups in that body were trying to get into the Seafarers. That wasn't working out.

Then they formed this other, I don't recall the name——

(Testimony of Edward Eugene McIsaac.)

Mr. Tobriner: Cannery and Food Process Workers.

A. (Continuing): They formed that, and we had the Teamsters, so there was really four factions working there all at one time trying to gain control of these workers which didn't tend to create harmony in the plant.

Q. (By Trial Examiner Lindner): Were you in charge of labor relations for the plant?

A. Yes, it's my duty to work out—

Q. Did you consider that the company had a closed shop? Do you understand what I mean by "closed shop"? A. Yes.

Q. A closed shop contract with Local 22382 when you first became employed there?

A. I did.

Q. When did you consider that that contract had ceased.

Mr. Agee: What was that?

Q. (By Trial Examiner Lindner): When did you consider that the closed shop contract with Local 22382 had come to an end?

A. I did know that Mr. Capolino notified that local on—It was immediately, I believe, after the first of the year [129] that the Scientific Nutrition Corporation had taken over full control of the plant and that any further negotiations would have to be with them, and that until such time as they negotiated a contract that it would be no longer under his name. To the best of my knowledge then we had no signed contract after that time.

(Testimony of Edward Eugene McIsaac.)

Q. Do you know of any signed contract that you had subsequent to 1941?

A. I have never seen any other contract, only that.

Q. You saw the contract that was signed in 1941 with Local 22382, is that correct? A. Right.

Q. Was it your understanding at the time that you became employed in January 1945 that that contract was then in existence?

A. That was my understanding.

Q. Is there any difference between the Scientific Nutrition Corporation and Capolino Packing Corporation?

A. Originally it was Capolino Packing Corporation. Mr. Capolino sold his plant to the Scientific Nutrition Corporation and the plant did and still does operate under the name of Capolino Packing Corporation here. We are a division of the Scientific Nutrition Corporation.

Q. When did that sale take place, if you know?

A. That sale took place, I believe in the early part of [130] 1944.

Q. It was prior to your employment with the company?

A. Prior to my employment. I couldn't tell you the exact date.

Q. You referred to a letter that Mr. Capolino sent to Local 22382 subsequent to January 1, 1945, in which he advised them of the change of ownership, is that correct? A. That's right.

Trial Examiner Lindner: Do you have a copy of that letter, Mr. Agee?

(Testimony of Edward Eugene McIsaac.)

Mr. Agee: No, I haven't. Is it in the file, Mr. White, do you know?

Mr. White: I imagine it is in the file.

The Witness: I might state, if I may at this time, that many of our letters that were in Mr. Capolino's file at the event of his death couldn't be found.

Q. (By Trial Examiner Lindner): Tell us again, if you will please, Mr. McIsaac, what the substance of that letter was.

A. The substance of that letter was that the Scientific Nutrition Corporation had taken full ownership of the plant and that any future labor contracts would have to be signed by the New York office until such time as he was authorized to do so himself. That was, I believe, in answer to a letter which is generally always sent out prior to the January first opening up the negotiations of a new contract, [131] that future contracts would have to be in the name of Scientific Nutrition Corporation rather than Capolino Packing Corporation.

Q. To the best of your knowledge when was that letter sent?

A. Well, I believe it was right after January first. It was in answer to a request to open up negotiation for a new contract for 1945 which has to be made prior to January first.

Q. Subsequent to sending that letter, did you continue to recognize Local 22382 as the exclusive bargaining representative of the employees?

A. We did.

(Testimony of Edward Eugene McIsaac.)

Q. On the same terms and conditions as the previous contract? A. That's right.

Q. And you continued to recognize them up until the signing of this new contract with the International Brotherhood of Teamsters on or about May 18, 1945, is that correct?

A. That's correct.

Q. Did you make any inquiry of Local 22382 before you signed this contract of May 18, 1945, whether or not they had relinquished the exclusive representation of the employees of the plant?

A. I believe the offices of that union were closed under [132] court order at that time.

Q. Will you answer my question. Did you make any inquiry of any of the officers or any of the other members of that union at that time?

A. We had been in discussion with them. They were in the plant almost every day. However, they had first come representing themselves as being with the Seafarers, and then there was this Cannery and Food Process Workers.

Q. In other words, you are telling us now at that time there had been a split up of the original Local 22382, is that correct?

A. That's correct.

Mr. Agee: Just a second. He said their offices were closed through court process which is a fact, and they were in the hands of the receiver at that time.

Trial Examiner Lindner: He has also testified—if I am incorrect let the record be corrected—that

(Testimony of Edward Eugene McIsaac.)

some of the officers were then associated with the Seafarers and others with the Cannery and Food Process Workers of Modesto, and others with the Teamsters, is that correct?

The Witness: Well, when they closed Local 22382 on that court order, they affiliated, so-called affiliated themselves with the Seafarers and came in there representing themselves as being affiliated with the Seafarers.

Then immediately after that, why we were informed that [133] they couldn't affiliate with them and this other union, Cannery and Food Process Workers Union, Mr. Tomson was the head of all three of these, that is what led us up to get our employees together to see if we couldn't get some clear-cut idea what they wanted, because first one week there would be one union represented and then there would be another one.

Mr. Tobriner: If I may interpolate here, I would like the record to show that the witness has interpreted the word "offices," "e-e-s," and your question was officers, "e-r-s." The witness, I am sure, meant that the offices, actually headquarters of 22382 were locked, and I as attorney for Local 22382 did secure a court order closing those headquarters and turning over all the funds to the American Federation of Labor.

Trial Examiner Lindner: I understood that the offices were locked, but I also understood the witness to mean that some of the officers including Mr.

(Testimony of Edward Eugene McIsaac.)

Tomson and some other names mentioned had then tried to become affiliated with some other organization.

Mr. Tobriner: That is correct. Mr. Tomson, the Secretary, resigned from 22382 and made his affiliation with the Cannery and Food Process Workers Union of Modesto Area. 22382 was put under trusteeship, and if Mr. Tillman likes, I can take the stand for this, but it is common [134] knowledge in the case. Mr. Dan Flanagan of the American Federation of Labor was put in charge of 22382.

Q. (By Trial Examiner Lindner): Did you advise the Teamster representatives, Mr. McIsaac, when they presented you with signed applications of some of the employees that they should negotiate with your New York office?

A. I can't answer that because that was done with Mr. Capolino. I did witness those applications and check them and make sure they were the right signatures of our employees, but I was not present when the final negotiations were made. Mr. Capolino handled that entirely by himself.

Trial Examiner Lindner: I have no further questions.

Mr. Agee: I have just one question.

Q. (By Mr. Agee): You testified that you came to the company in January of 1945 and that to your knowledge between that time and May 18, 1945 no employee had been discharged because of failure to maintain good standing in 22382, is that correct?

A. Yes.

(Testimony of Edward Eugene McIsaac.)

Q. Did Mr. White come to the company at the same time?

A. He came about three weeks after I did.

Q. Three weeks after, so his duration was even shorter than yours at that time? A. Yes.

Mr. Agee: That is all.

Recross-Examination

Q. (By Mr. Tobriner): Mr. McIsaac, the contracts that you mentioned that you had with 22382 for some years prior to the events we talked about today were with 22382 when it was a member of the American Federation of Labor, that is correct, is it not?

A. That is correct.

Q. You did receive a letter on May 8 which is your Exhibit No. 1, stating that the American Federation of Labor had assigned jurisdiction over the workers who were in 22382 to the Teamsters, is that correct? A. That is correct.

Q. Did you know that 22382 at this time had been placed in the hands of a trustee, Mr. Dan Flanagan?

A. I had read it in the newspapers.

Trial Examiner Lindner: At what time?

Mr. Tobriner: During the month of May.

Trial Examiner Lindner: What was the exact date Mr. Flanagan took over trusteeship of that organization, if you know?

Mr. Tobriner: I know it was in the early part of May. I don't know if it was May 10th or May 15th, but it was prior to May 15.

(Testimony of Edward Eugene McIsaac.)

Trial Examiner Lindner: Was that on order of the court? [136]

Mr. Tobriner: There was an order signed by William Green appointing him as trustee, and thereafter he went to court and I was his attorney securing a restraining order against the former officers of 22382 from interfering with his trusteeship. That matter was heard and the court sustained the position.

Trial Examiner Lindner: Let me interrupt. I would like you to proceed with your questioning of this witness, and then if you will, I would like you to state for the record the exact chronology of the trusteeship and so forth.

Mr. Tobriner: I will be glad to do that.

Q. (By Mr. Tobriner): Did you ever have any notice from Mr. Flanagan, either written or oral, that he objected to the recognition by your company of the Teamsters Union?

A. I don't recall of any myself.

Q. You never had any notice from Mr. Flanagan that you recall objecting to the Teamsters?

A. That's right.

Q. You never had any objection from Mr. Green, American Federation of Labor, objecting to your recognition of the Teamsters? A. No.

Q. You never had any recollection of any one American Federation of Labor organization objecting to your recognition of the Teamsters? [137]

A. No.

Trial Examiner Lindner: How would Mr. Green, Flanagan, other representatives of the

(Testimony of Edward Eugene McIsaac.)

American Federation of Labor object to the company's recognizing the Teamsters? What is the relevancy?

Mr. Tobriner: I want to show what was done, recognizing the Teamsters, was not in conflict with Local 22382.

Trial Examiner Lindner: Not in conflict with the thinking of Mr. Green and Flanagan?

Mr. Tobriner: No, Local 22382. I thought in some of your questions you thought perhaps in recognizing the Teamsters he was breaking off with 22382, and perhaps there was something wrong there. I want to make sure the chain of events whereby recognition of the original 22382 then related to the recognition of the Teamsters and was in conformity with his previous relationship with 22382.

Q. (By Mr. Tobriner): Is it a fact that the Teamsters were regarded, or were they regarded as a successor to 22382?

Mr. Tillman: Regarded by whom?

Q. (By Mr. Tobriner): By the Company.

A. By the company?

Q. Yes.

A. After a majority of our employees signed applications we recognized them.

Mr. Tobriner: Thank you. [138]

Mr. Tillman: I just have one question.

Q. (By Mr. Tillman): Do you know whether or not the company stopped deducting dues for Local 22382 at the same time they had sent this letter to Local 22382 you mentioned?

(Testimony of Edward Eugene McIsaac.)

A. We deducted no dues after Mr. Capolino wrote that letter the first of the year. The dues were deducted by the shop steward.

Q. Were the dues stopped—was the collection of the dues stopped as a result of that letter or in conformance with it?

A. I presume it was a result of that letter. They were informed in that letter they would have to collect the dues.

Mr. Tillman: That is all.

Trial Examiner Lindner: Any further questions?

Mr. Agee: No questions.

Trial Examiner Lindner: You are excused.

(Witness excused.)

Trial Examiner Lindner: You may call your next witness.

Mr. Agee: I have no further witnesses.

Trial Examiner Lindner: Do you have any witnesses?

Mr. Tobriner: I have no witnesses.

Trial Examiner Lindner: Does Mr. Horie have any witnesses?

Mr. Horie: No.

Mr. Tobriner: Perhaps I should make that statement, [139] but I can do it in the course of argument.

Trial Examiner Lindner: I think you may well do that in the course of your oral argument.

Is there any further evidence that any of the parties wish to adduce upon any of the issue of this proceeding at this time?

Mr. Tillman?

Mr. Tillman: No.

Trial Examiner Lindner: Mr. Agee?

Mr. Agee: No.

Trial Examiner Lindner: Mr. Tobriner?

Mr. Tobriner: No.

Trial Examiner Lindner: Mr. Horie?

Mr. Horie: No.

Trial Examiner Lindner: There being no further evidence with respect to the issues of this proceeding that any of the parties wishes to adduce, I shall now hear motions and arguments upon the merits.

Do you have any motions, Mr. Tillman?

Mr. Tillman: I have no motions.

Trial Examiner Lindner: Mr. Agee?

Mr. Agee: I have not.

Trial Examiner Lindner: Mr. Tobriner?

Mr. Tobriner: The motion I made, I prefer to argue with the rest of the case if I may. [140]

Trial Examiner Lindner: Mr. Horie?

Mr. Horie: No.

Trial Examiner Lindner: At this time then we will hear oral argument.

You may proceed with oral argument, Mr. Tillman.

Mr. Tillman: With respect to the 8 (3) part of the complaint, the facts are very simple from

the standpoint of the Board. The undisputed testimony shows that Mr. Cedar was discharged because he refused to join the Teamsters. That in effect constituted encouragement of the Teamsters and therefore would be a violation of Section 8 (3) of the Act unless the company were protected by some valid closed shop contract.

Before discussing the question of a valid closed shop contract, I might state that the discharge of Mr. Cedar also discouraged membership in the FTA, CIO, although the FTA-CIO was not in the picture at that time; but the fact that he had been discharged for refusing to join was an indication of what would happen to other employees and also an indication of the fact that the CIO members would not receive employment at the company. In that respect, too, the discharge was in violation of Section 8 (3) in that it discouraged membership in the CIO.

Trial Examiner Lindner: Do you contend that despite the fact that this discharge took place before any activity [141] on the part of the CIO became known in the plant?

Mr. Tillman: May I have that read?

(The Trial Examiner's question was read by the reporter.)

Mr. Tillman: Yes. My contention is, of course, that it set a pattern, or at least it was a precedent which any employee in the plant who was inclined to join the CIO was faced with, and in that sense such an employee would be fearful of joining the

CIO because of the possibility that he might be discharged. Of course, the fact that Mr. Cedar had been discharged must have been well known at the time of the election and would tend to discourage any other employees in the plant from showing favoritism for the CIO.

As I stated, this is clearly a violation of the Act unless the company is protected in some way under the proviso to 8 (3) by having entered into a valid closed shop contract with the union.

There has been offered in evidence a contract dated May 18, 1945, which apparently was offered for the purpose of showing that it adopted the so-called "Green Book Contract" existing between the CP&G and the American Federation of Labor Unions.

I might point out first that this so-called adoption contract of May 18, 1945, nowhere in it contains any provision that it does adopt the "Green Book Contract." It merely agrees to recognize the Teamsters as the bargaining [142] representative for the employees who are covered by that contract, and further, to place in effect any amendments to the Master Agreement. But insofar as adopting the Master Agreement itself, the document does not do that on its face.

Assuming that the parties understood that they were adopting the "Green Book Contract" by this document of May 18, 1945, we have to search the "Green Book Contract" for any closed shop provision because there is no closed shop provision in the contract of May 18, 1945.

It is the contention of the Board, of course, that there is nothing in the Green Book Contract'' in the nature of a closed shop provision. There is a provision with respect to hiring, what you might call a "hiring hall" provision, but nothing in there that required employees who were hired prior to the contract going into effect or being adopted to maintain membership in the Teamsters at the cost of losing their job if they failed to do so.

In that connection that the "Green Book Contract" does not contain a closed shop clause, I would like to cite the Pilot Radio Case, 14 NLRB 1085, and the Isthmian Steamship Company, 22 NLRB 689.

Now, to go one step further and assume that the "Green Book Contract," that is, assume for purposes of argument that the "Green Book Contract" does contain a closed shop clause, there still are certain conditions imposed by the [143] proviso in Section 8 (3) which must be met in that contract to protect a company when it discharges an employee. Among the conditions are that the contract must be with an organization which is not assisted in getting the contract or not assisted in any way by unfair labor practices.

The Board has attempted to show at this proceeding that the Teamsters was an assisted union, that is, assisted by unfair labor practices. In connection with that, I might cite the fact that testimony of Mr. Cedar and also Mr. McIsaac shows that the Teamsters were permitted free access to the plant, and not only permitted free access, but the em-

ployees were collected together to make it more convenient for the Teamsters to address the employees.

Further assistance consisted of the fact that the Teamsters were permitted to solicit membership on the company time and property following this meeting, and subsequently four and five days later.

Additional assistance took place in that first meeting which Mr. Capolino called in which he, according to Mr. Cedar's, and I think Mr. Cedar's testimony should be considered, told the employees that they should join the Teamsters because if they didn't join the Teamsters the Teamsters would stop hauling produce and the cannery would be forced to close.

That, of course, didn't give the employees much alternative, [144] and the fact that the company, as it were, might have been caught in the middle of an economic battle between two unions didn't, of course, justify them in giving assistance to the Teamsters.

I think still additional assistance can be found in the fact that the company was well aware May 18, 1945, when they signed the contract with the Teamsters, that there was at least one other union or at least there were factions, parts of unions which were contending to represent their employees. Nevertheless, in the case of these conflicting claims, the company went ahead and recognized the Teamsters. It is true enough that they recognized the Teamsters after a check of cards, but since these cards had been secured in the plant with the assistance of the company, and inasmuch as employees are probably inclined to sign cards for any union

that comes along in such a situation as this, the cards themselves don't bear much weight as to whether or not the Teamsters represented a majority.

For these several reasons that I last cited, facts which constitute 8 (1) or interference, assistance and preference, the company has assisted the Teamsters with unfair labor practices and as a result the Teamsters is an assisted union and the closed shop contract, if it be found to be such, since it is with an assisted union, does not give the company any right or did not give the company any right to [145] discharge Mr. Cedar. They were not required to do so, and therefore it is 8 (3).

That is all.

Trial Examiner Lindner: Is it your contention that the contract of May 18, 1945, was invalid because of the assistance granted by the company?

Mr. Tillman: That is correct.

Trial Examiner Lindner: Mr. Agee.

Mr. Agee: The company takes the position that the decision of the National Labor Relations Board rendered on February 15, 1946, in which we were involved as participant and party specifically styles the contract arrangement which we had through the years from 1941 with Local 22382 as being a closed shop contract; and I refer to page 5 of the Decision which we cite: "In this state of the record no legal aspect may be given the closed shop provision contained in the current collective agreements after their expiration date."

The current contract runs from March first to March first and the current contract that was had

with Local 22382 expired March 15, 1945, unless, under provisions of the Master Agreement, negotiations were then pending, or unless either party to the contract had given previous notice in writing 15 days before the termination date.

It is our position that despite the statement of the Board's counsel that our Agreement embodying by reference [146] the "Green Book Contract" did not constitute a closed shop, we not only contend to the contrary but point to the language of the decision of the Board itself as corroborating and verifying our contention in that respect.

The next proposition is this: That even though as set forth in the charge on file here, the Board, in its decision, enjoined the canners from dealing with any union as an exclusive bargaining agent, that that was mere dicta on the part of the Board, and in fact the Board's attorneys in other hearings held up and down the valley have acknowledged that for the record, and all they had before the Board at that time was the point as to whether the election held in October, 1945, was or was not a valid election; and having determined that point, to go on and enjoin the canners as they attempted to do, from following out what we claim are the plain provisions of the Wagner Act were mere dicta, did not have force or affect of law.

Under those circumstances where we have at the time the incident occurs, only 26 employees in a non-supervisory capacity, and written evidence which is verified by our own records proving beyond any doubt that this Teamsters Union did represent the

majority of the workers, we were required under the Wagner Act to deal with that body as exclusive bargaining agent. We entered into the contract May 18, 1945, under those circumstances, and by reference [147] the "Green Book Contract" was incorporated therein and we agreed to live up to the terms and provisions thereof.

We say that it constituted a closed shop contract, not only on the basis of what was in writing but on the basis of the oral understanding existing between the union and carried out over the period of years by conduct of the parties. We take the position that the Teamsters succeeded to the position 22382 formerly had occupied insofar as the company was concerned, and we merely changed our dealings from 22382 under the circumstances recited, to the Teamsters Union and thereafter treated the Teamsters Union exactly as we had for many years treated Local 22382.

As counsel admits, if we entered into a valid contract on May 18, 1945, under terms and provisions requiring us to maintain a closed shop provision and to discharge any employees who did not become members of the Teamsters Union and maintain good standing in that union, obviously the discharge of Mr. Cedar was not improper.

The contention is made the contract of May 18, 1945, was invalid because it was brought about through the assistance of the company. Well, they brought one witness here, Mr. Cedar. Mr. Cedar testified about his discharge on June 22, 1945. He has since, of course, affiliated with the FTA-CIO,

and it is a question. I suppose, for the tryer of facts to determine whether Mr. Cedar is biased or prejudiced [148] or whether he strained himself just a little bit when he went beyond what we contend took place and stated the company said: "Are you going to join the Teamsters Union?" We contend they said, "Boys, make up your minds, decide what you are going to join. We don't care what you join, but confusion will result in the company closing down. So for heaven's sake, make up your minds and let's go on with our work."

I don't know what an employer is supposed to do or not do. Counsel made the remark that the mere fact that the company is caught in an economic fight between two unions does not justify it. Well, I assume it doesn't justify certain things, but whether a company can stand idly by and see two or more unions get into an economic fight in which the company will be extinguished—there is no question about that, it can't continue operation—whether that is what the law requires of them, I don't know.

As collaboration of the fact that the company in good faith dealt with the Teamsters as the representative of the majority of the workers, we point to the election that was held in October of 1945 which would be some five months after this contract of May 18, 1945, was signed, and we point to the fact that according to the Board's findings there, they have no challenged ballots, they have no void ballots, and yet a clear majority was cast for the Teamsters Union. And [149] this third union that was injected here got absolutely no votes at all.

If the company in good faith dealt with the Teamsters Union as the representative of the majority of the workers pursuant to that entering into of this contract, then the whole case, of course, falls, unless the tryer of the facts wants to take literally every word of Mr. Cedar and to draw inferences and conclusions from the testimony unfavorable to the company and build up a picture of coercion, intimidation and persuasion on the part of the company. That is something over which we have no control, that is going to depend upon the individual who has the duty of determining the facts; but for what it is worth, I think Mr. McIsaac gave a very clear picture of the situation here. I don't think the company has injected itself, I don't think the company was happy that the Teamsters came around, I don't think the company was pleased because their dealings changed from 22382 to the Teamsters Union, I don't think the Company had anything to do with originating it or encouraging it. But they were faced with a very confused situation and all they wanted was that the matter be determined.

That is all I have.

Trial Examiner Lindner: Before we proceed with you, Mr. Tobriner, I think we might take a short recess.

(Whereupon a short recess was taken.) [150]

Trial Examiner Lindner: The hearing is in session. You may proceed, Mr. Tobriner.

Mr. Tobriner: This argument will treat three independent points. First, a chronology of the events that occurred; second, the procedural irregu-

larities that are fatal to the Regional Office's case; third, the substantive failures in this case.

To begin with, the sequence of events. Originally, Local 22382 was a Federal Union directly chartered by the American Federation of Labor covering the cannery workers in the Modesto area. Thereafter, in accordance with the practice and procedure of the American Federation of Labor, the jurisdiction of the Federal Union was assigned to the International Union which the Executive Council felt covered that jurisdiction. At the meeting of the Executive Council of the American Federation of Labor taking place April 30 to May 8, 1945, the Council ruled that the jurisdiction over cannery workers should be assigned to the International Brotherhood of Teamsters on the basis that the Teamsters had jurisdiction over the warehousemen and the warehousemen in the canneries therefore belonged to the Teamsters, and rather than split the unions in the cannery field, that the entire jurisdiction be awarded to the International Brotherhood of Teamsters.

Thereafter, as is shown in Respondent's Exhibit No. 1, [151] on May 8th the International representative of the Teamsters notified the Scientific Nutrition Corporation of this award of the Executive Council. The American Federation of Labor, through its President, William Green, appointed a trustee over Local 22382 to make sure that the assignment of the workers was properly carried out. That appointment was made on or about May 10th.

Mr. Flanagan requested of the existing officers of 22382, that is, Mr. Tomson and some of the other officers, that they turn over to him the assets and properties of 22382. Upon their refusal to do so, a suit was instituted in the week commencing May 30, 1945, to the Superior Court in and for the County of Stanislaus. By reason of that order the headquarters of 22382 were locked pending the hearing of the order to show cause.

The hearing took place some ten days thereafter. The assets, the properties, the funds and monies of 22382 were turned over to Mr. Flanagan as trustee.

Finally, the case was heard at trial in the month of September, 1945, and a final order was made assigning the headquarters, assets, properties and funds to Mr. Flanagan as trustee on behalf of the American Federation of Labor taking over 22382.

In accordance with the award of the American Federation of Labor, the International representative of the International [152] Brotherhood of Teamsters did demand of the Scientific Nutrition Corporation that they recognize the jurisdiction of the Teamsters. That has been testified to in this case. It is true that some of the people in the AFL, that is, in 22382, were dissatisfied with the award of the American Federation of Labor, and some of them, we believe a minority, attempted to set up a separate union which was known as Cannery and Food Process Workers Union of Modesto Area, which in turn attempted to affiliate with the Council, the Pacific Coast Council of Cannery and Food

Process Workers Union, which in turn attempted to get a charter from the Seafarers' International Union.

On April 26, 1945, the American Federation of Labor wired to President Lundeborg of the Seafarers' International Union that it had no jurisdiction over the cannery unions, and on August 10, 1945, Mr. Lundeborg, the President of that union, informed the American Federation of Labor that "whatever charters may have been issued by affiliates have been withdrawn at my direction."

Therefore, there is no organization of Cannery and Food Process Workers Union affiliated with the Seafarers' International Union. Although some remnants of that union attempted to set up independent unions not affiliated with the SIU, those independents have now gone out of existence, and I think the testimony disclosed, were not active in this [153] picture here after the month of August or September. The proof of that is that the final election which was held in October between the CIO and AFL, independents got a scattered 100 votes out of some 18,000-odd cast.

Trial Examiner Lindner: The independents were included on the ballot, is that correct?

Mr. Tobriner: That is correct.

Such is the chronological story back of this picture that affects this Pacific employer here.

I now will treat of this specific case. In all candor, and with a high regard for the Regional Office here and its usual vigilance in seeing to it that cases it believes have a foundation are quickly heard and

disposed of, I submit that the Regional Office is not too serious in its contention in this case. The facts bear out the certainty that this case has very little foundation to it.

In the first place, if the Regional Office did seriously regard this case, it never would have let this one-year period intervene between the time of this alleged discharge and its present action. Certainly, a case that merits consideration is not allowed to sleep so that an employer, if he were guilty, would find himself charged with one year's back pay. That is not the usual practice of this Regional Office and that is why I say that is proof the Regional Office should know that this case has no [154] foundation whatsoever.

Aside from that irregularity, I point to the peculiar nature of the charge. The charge which has been brought against us here is a charge filed by FTA-CIO. FTA-CIO, as the testimony shows, was not even in the picture when this alleged discharge was supposed to have taken place on June 22, 1945. When the Trial Examiner asked the counsel for the Board as to how he did link up the present charge of FTA which alludes to this discharge and the present case, Mr. Tillman replied that in substance, FTA could be hurt by the possibility that a discharge could recur in the future; that this one discharge set a pattern and that this must have been known, I think he said "well known" at the time of the election.

I concur with Mr. Tillman in those remarks. If it is true that this set a pattern, and if it is true that

FTA were hurt in some manner by this discharge, and therefore had a basis for this charge here, it certainly would have been known at the time of the election. It would have either objected to the election or it would have filed objections which it would have pressed after the election.

Neither of those situations eventuated. As a matter of fact, in the first place I have great difficulty in seeing how one discharge, and an isolated one occurring in April of 1945, could set a pattern for an election occurring in [155] October of that year. But aside from that, we have the complete answer to Mr. Tillman's position in the fact that the CIO did file objections to this election of October, 1945, and did thereafter withdraw them. I cite to the Trial Examiner the Supplemental Decision and Order in this Bercut-Richards Packing Company case, footnote 2 and particularly footnote 3, reading as follows:

“The CIO also filed objections with respect to elects and two of the independents companies but has since withdrawn them with the statement that they were ‘insubstantial.’ ”

The file will show that objections to the election were filed by the FTA-CIO by its attorney, Bertram Edises, for Gladstein, Grossman, Sawyer and Edises, on October 27, 1945, in the matter of Scientific Nutrition Corporation, Case No. 20-R-1464, and those objections which will be shown in the file are the ones to which this footnote alludes, were the ones withdrawn. So how FTA-CIO now, six months

later, can come in and claim on the charge that by reason of a discharge occurring one year prior that they were prejudiced in some way on an election when they have already withdrawn those objections as is shown in the Supplemental Decision of the Board, I do not know.

But we need not rely only on that for the procedural irregularities which completely determine this case. If the Board is trying to make a case for 8 (5) here they have [156] failed because they have shown no request for reinstatement. I asked the witness if he ever went back and asked for his job. He replied, "No." There is nothing in the record whatsoever to show any request or demand for reinstatement. There is no showing in the record of any lack of employment after the alleged discharge. There is no showing of any wages lost. There is no showing in the record whatsoever from a procedural standpoint, of a discharge case.

So, procedurally based upon the failure of a charge by the Cannery and Food Process Workers Union, indeed, not only failure but the reverse side of the picture shows itself, because there was evidently some complaint or some objection made by the Cannery and Food Process Workers Union on May 19 a few days after this contract was signed, and yet this Regional Office did not proceed upon the Cannery and Food Process Workers' charge; but the record shows that that was dropped, and instead, a year later this Regional Office comes along with some other claim having previously dropped the charge founded upon the subject matter of this complaint.

The whole picture here is a rather amazing and I would say conclusive one as against the position of the Regional Office.

Trial Examiner Lindner: Mr. Tobriner, the complaint alleges that Mr. Cedar was discharged, and he testified that he was discharged on June 22, 1945.

Mr. Tobriner: Yes, that is correct. That is what it says, he was discharged under a contract entered into in May previous thereto, and this complaint alleges that there was duress or intimidation either at the time that contract was signed or immediately prior thereto.

The defense of the company is the contract permitted the discharge. The answer of the Board is that the contract found its life in discriminatory practices. The discriminatory practices were the very things complained about by the Cammery and Food Process Workers Union, and those practices never did blossom out in any kind of charge case at that time on the part of the Regional Office.

Aside from the procedural aspects of the case, I want to turn to the substantive facts. These again, I think, are conclusive.

The Board itself has given us the answer on the contract. The company defends itself on the basis of the contract. The Board has already told us that the contract is a valid contract, and a contract which will substantiate the discharge.

First, I refer to the Decision, Direction of Elections, and Order of the Board in the Bereut-Richards case. This decision was rendered on October

12, 1945. The Decision alludes to the existing contracts with the Independents. The Board rules:

“Upon the facts in the present record we shall assume the validity of the extended agreements hereinabove referred to.”

That is on page 3.

The Board, in its original Decision issued in October 12, 1945, recognized the validity of these existing contracts and said the election would be held in October of that year only for the purposes of determining a collective bargaining agency to negotiate a new contract, but recognized the validity of the existing one. It even said:

“However, any certification of representatives which may issue as a result of the elections hereinafter directed, shall be solely for the purpose of designating a bargaining representative to negotiate a new agreement to become effective upon the expiration of the existing contract.”

So the Board, inferentially, in its first decision, recognized the validity of its contract which the Regional Office now attacks.

But the Board went much further. In its Supplemental Decision and Order rendered February 15, 1946, it again recognized the validity of this very contract which is now subjected to attack, because there on page 5 the Board says:

“In this state of the record no legal aspect may be given the closed shop provision con-

tained in the current collective agreements after their expiration date.”

I emphasize the word “after.” The Board has, in the paragraph which we do consider dicta but nevertheless is there, said that the current collective agreements are to be [159] recognized until their expiration dates, but not after their expiration dates. No claim is made that this contract was continued after its expiration date. The claim now is that there was some invalidity in what the employer did during the life of the contract and prior to the expiration date.

This contract ran from March first, 1945, to March first, 1946, or thereabout.

Trial Examiner Lindner: The contract was entered into May 18, 1945, is that correct?

Mr. Tobriner: Yes, May, whatever the dates were.

Trial Examiner Lindner: Is there any expiration date on that contract?

Mr. Agee: If the parties give notice as provided by the Master Agreement, 15 days to each side; otherwise it goes on.

Mr. Tobriner: There is no expiration date then shown in the contract, and according to the Board's own decision, during its life there is no objection to its validity.

Aside now, from the Board's expression on the contract, I would like to go to the substance of the action of the parties. There are two reasons why the contract is good, aside from all points we have

mentioned here. First, the May 18 contract was entered into with the Teamsters as a successor union to 22382. The AFL had awarded jurisdiction to the Teamsters. The employer, being bound to the AFL, [160] certainly had the right if it so chose, to go along with the recognized bargaining agency and recognize the union which it assigned to have jurisdiction over these workers. But this employer made assurance doubly sure. I think it would have been enough for the employer to accept the decision of the AFL and recognize the Teamsters as the successor union, but here the employer went even further. He made sure that each of his individual employees, at least to the extent of a majority, designated the Teamsters as the union to serve as collective bargaining agency.

What more could the employer have done? Is there anything in the Act that says that an employer cannot recognize a union which shows that it holds the designation of a majority of the employees?

There was no petition filed at this time for an election. There was nothing pending before the National Labor Relations Board or its Regional Office. This is not a case where an employer, during the time that election may be pending, decides to give a contract or to take some action with respect to one or the other unions. Here no petition had been filed, so the employer was in the normal position of any employer who finds the majority of his workers coming to ask him to deal with a particular union.

There has been no showing in the record that any other union made any claim that it represented a

majority of the [161] employees. Indeed a letter was introduced by the Regional Office which said something about the Cannery and Food Process Workers Council, and I think that letter was admitted over my objection, but the letter on the face of it shows that the Council was only to act for this other union in the event that a request was made by the other union. It said that the Cannery and Food Process Workers Union of Modesto Area were members of this Cannery and Food Process Workers Council, and that they could request that Council to ask the Council to act for the union. There is no statement that any request was ever made.

Certainly, the employer was completely in the clear, first in recognizing the successor union to the union whom it had recognized for five years; and second, in recognizing the union whom a majority of its own employees had designated to be the union of their own choice.

Counsel for the Regional Office says that the Teamsters were a company-aided union and that the company assisted the Teamsters by reason of the fact that the company permitted free access of the plant to the AFL organizers and called the meeting at the plant. I would like the Trial Examiner to inspect the decision of the Trial Examiner in the Flotill Products Company case where similar claim was made by this Regional Office. In that case, the Trial Examiner found no validity to the position of the Regional Office. In that [162] case, the same claim was made, but in fact, even stronger. There it was argued that because the management per-

mitted a truck of the AFL on the premises during the election and permitted the AFL officials to go in and hold meetings, that such actions showed company assistance and discrimination.

The decision which I do not have with me of the Trial Examiner points out that those factors were not sufficient to show any company influence; that in fact at that time the company was under a contract with the AFL and therefore it was perfectly proper for AFL officials to visit the plant.

We will say here too that 22382 had a contract with the company, and under that contract there was certainly nothing wrong for AFL officials to visit the plant. Certainly I have never heard of a case or any decision in the whole law of labor relations which says that an employer commits an unfair labor practice just because he would permit an official of the union under which he is under contract to visit the plant.

Trial Examiner Lindner: Are you drawing no distinction whatsoever, Mr. Tobriner, between the International Brotherhood of Teamsters which was given a contract by this company on May 18, 1945, and Local 22382 which had previously had a closed shop contract with the company for many years?

Mr. Tobriner: Our position is, as the exhibits show, that the American Federation of Labor in which 22382 had been [163] a member assigned jurisdiction over the workers who formerly had been in 22382 to the International Brotherhood of Teamsters.

Trial Examiner Lindner: By that assignment are you now contending that there was a successorship?

Mr. Tobriner: I contend that as one basis to uphold the contract. There are two, as I said. There is one, the successor argument that the AFL had the right——

Trial Examiner Lindner: I understand your other argument that the Respondent recognized the Teamsters only after they had shown the majority of the employees signed.

Mr. Tobriner: That is right. I think either would be sufficient.

My position is that if a Federal union is a member of the American Federation of Labor, that the employer is certainly free to recognize the International Union to which that Federal Union is assigned. The Federal Union is nothing more than an organizing agency.

Trial Examiner Lindner: Do you contend that despite the fact the Federal Union may object?

Mr. Tobriner: I would not say despite the fact the Federal Union may object.

Trial Examiner Lindner: (Continuing)—to the statement of William Green or anybody else that union was being assigned to the Teamsters? [164]

Mr. Tobriner: Mr. Trial Examiner, I would not go that far in this case because that did not happen. 22382 as I brought out in cross examination of Mr. McIsaac, at no time registered any objection to going over to the Teamsters. No one in the AFL registered any objection. The only objection came

from some former officers who withdrew from 22382 and set up a rival union which became independent of the AFL.

Trial Examiner Lindner: Isn't it a fact that at or about that time, the assignment had already been made and Local 22382 was in the midst of some legal suit?

Mr. Tobriner: It was only afterwards. As I told you, what happened was: First, the assignment was made; then pursuant to it, Mr. Flanagan of the American Federation of Labor came out here and proceeded to carry out the orders of the American Federation of Labor. Some of the officials of 22382 withdrew, and I think perhaps unless there is objection I might submit a copy of the complaint so that would be absolutely clear.

Trial Examiner Lindner: I don't think that is necessary. But it occurs to me, Mr. Tobriner, that if there was no complaint whatsoever to the assignment that was made by the top officials of the American Federation of Labor of Local 22382 to the Teamsters Union, that no suit would have followed. Is that correct?

Mr. Tobriner: No, the suit that followed was because [165] we wanted to get the property of 22382. Mr. Tomson who was the Secretary refused to turn it over to the officials of the American Federation of Labor. That is what happened. He simply said "I will not turn this over until you get a court order." So we proceeded to get a court order which turned over the property.

That did not involve a jurisdictional question whatsoever. It merely involved the question of headquarters, funds and properties of 22382. So far as this record shows, I don't know anyone in 22382 who objected either to this management or to anyone else as such. I will say, certainly to this management, maybe to some other management, but I haven't run across it. Therefore this management is certainly in a position to recognize an assignment which the members of 22382 so far as it knew concurred in.

But they made a double check of making sure their employees likewise signed up with the Teamsters, so I don't see how anyone could possibly contend that contract was not founded on a valid contract with management.

Trial Examiner Lindner: Is it your contention, Mr. Tobriner, if the Respondent gave the use of its time and property as has been testified here, that they did to the Teamsters, that that is not assistance to the Teamsters?

Mr. Tobriner: My first answer to that, as I said in my argument, was that the management was under contract to [166] 22382 and as such there could be no objection whatsoever to someone coming in as an official either of the AFL or any constituent body of the AFL.

Trial Examiner Lindner: That is following up your theory of successorship?

Mr. Tobriner: Yes, that is correct. So that I think that disposes of any claim on the part of the Regional Office that that was assistance by management.

I likewise have not heard any testimony or any proof that a visiting of the plant by an official necessarily spells out assistance. The first answer I have already given, that is that it is under the contract and therefore was proper, but even so, even if there was not a contract, I don't know that management necessarily assists a union if it lends a place to meet to the employees. No showing has been made that management might not have done the same thing if another union came around. No other did come around, there is no showing any other union asked to come here and hold a meeting.

Mr. Agee: The record is undisputed that 22382 was there every day. There is no denial of that.

Trial Examiner Lindner: I am just trying to determine Mr. Tobriner's contention on that.

Mr. Tobriner: Even on the bare question of whether a management commits an unfair practice by allowing its premises [167] to be used by, let us say, two contending unions in the event there is a dispute, I fail to see that as an unfair labor practice if management says each of them can come in and talk to the workers and use the halls. I would say on the contrary, if management closed the halls to either contender, then it might perhaps interfere with the freedom of choice.

For all of these reasons I think there are a great many, I think this complaint must fail. I think it fails on many different grounds, procedural as well as substantive, and I submit the matter on that basis.

Mr. Tillman: I have a couple of statements in rebuttal.

Trial Examiner Lindner: You may proceed.

Mr. Tillman: Every one of these cannery cases it has been mentioned that the Board in the representation case determined that the CP&G contract was a valid closed shop contract and it has been necessary for the Board attorney to point out that the Board did not have inconsideration in a representation case either the validity of the contract or whether or not it was a closed shop contract. As far as this proceeding is concerned, this will be the first time that determination is made, and accordingly, no reliance can be placed upon the terminology which may have been careless, used by the Board in its representation decision.

The company pointed out in its argument that the Teamsters had obtained a majority in the election which was held in October 1945 which more or less proved that the company had not favored one union over the other. Naturally, that argument doesn't resolve the situation inasmuch as if the company had shown its hand and shown which way it preferred to go, which union it favored, the odds would tend to result in a victory for the Teamsters in the election since they were the favored union.

In response to the argument by Mr. Tobriner with regard to the procedural defects in this case, I am unable to state myself exactly what accounts for the delay of a year. There is nothing in the record to show what accounts for that delay. It may have been because the representation proceeding went ahead and got into so much work on trying to settle that matter. I don't know what is involved, but I don't think it is fair to argue that because of

this delay, without knowing what the reason for the delay was, that there is a procedural defect and that the complaint should be dismissed for that reason.

Then the further statement that the FTA-CIO was not prejudiced in this case and therefore properly could not file a charge, in that connection I know of nothing in the Act that requires that a labor union be on the scene of the unfair labor practice in order to file a charge against the company. So that the fact that the FTA-CIO did not come [169] into the picture until later is immaterial and does not procedurally make the complaint defective.

Likewise Mr. Tobriner stated that the 8 (3) employee has to demand reinstatement or that there can be no filing of unfair labor practice, 8 (3) unfair labor practice. I can't cite any cases right now off hand, but I know that matter has been settled by the Board, that it is not necessary that an employee who has been discharged come around and ask for reinstatement, nor is it necessary in a proceeding of this kind to show that there is a loss of pay or that the employee is still out of work, because those are matters which are ordinarily taken up when the compliance stage is reached.

Just to clear up one matter with respect to the stipulation as to this old charge which was filed by the Cannery and Food Process Workers Union, I gather Mr. Tobriner inferred because he stated that this charge was dismissed previous to the issuance of the complaint of the present proceeding—I don't want the record to be unclear on that—my stipulation did not state that this charge was dismissed

prior to this proceeding. In fact, I did not state when the charge was dismissed.

Mr. Tobriner: That is right.

Mr. Tillman: Frankly, as far as I know, no notice has gone out even to the Respondent yet that charge has been [170] dismissed.

Mr. Agee: I don't know of any notice. I never even heard of the charge.

Mr. Tillman: As I understand, we considered the charges together, decided to go ahead on one and forget the other one inasmuch as they both covered the same allegations.

One last statement that the Teamsters is a successor to Local 22382 in the sense that it merely stepped into Local 22382's shoes and took over the contract. Well, the testimony in this case shows on or about January 1, 1945 there was no contract between the company and Local 22382 so there was a gap in there of some months up until May 18, 1945. So we don't actually have a situation of a change in a party to an existing contract. We have a completely new contract with a completely new party stepping into the picture. The fact, no one in Local 22382 objected to the Teamsters taking affiliation over Local 22382 is not too important when we remember that the officials of 22382 after this time were appointees of William Green and acting as trustees. They were more or less bound to carry out the decree of the Executive Council of the AFL.

That is all.

Trial Examiner Lindner: Do you have anything further?

Mr. Agee: Just one thing. I referred to the testimony of Mr. Cedar that so far as he knew from the commencement of [171] his employment in 1944 by the Capolino Company, until his discharge in June of 1945, that all of the employees who were eligible were members in good standing of 22382 up until they entered into contract May 18, 1945; and I call attention to the similar testimony of Mr. McIsaac, although his personal knowledge only ran back to January of 1945, as evidence which is undisputed in the record that the company dealt with 22382 as under a closed shop contract insofar as the retaining of employees was concerned, and that they continued that same identical policy with the AFL Teamsters under the contract of May 18, 1945, and that the conduct of the parties here without any dispute in the record, as well as the contracts themselves show that a closed shop was being maintained and it was continued, it wasn't that they had dealt with 22382 in any way differently than they dealt with the Teamsters Union.

Part of this question would be a conclusion, but it stands in the record undenied and undisputed, and that was the question put to Mr. McIsaac "Did you, following receipt of the demand of June 22, 1945 from the Teamsters Union, and in accordance with your contract with them, discharge Cedar?" Of course his answer is in the record and no objection was made to the question and no dispute is here to the testimony that Mr. Cedar's discharge was under any circumstances other than those testified to by Mr. McIsaac. [172]

That is all.

Trial Examiner Lindner: Mr. Agee, Mr. McIsaac testified to a notice that was sent by the Scientific Nutrition Corporation to Local 22382, or rather by the Capolino Packing Corporation to Local 22382 that they had sold their business to the Scientific Nutrition Corporation and that henceforth any negotiations for the renewal of a contract which I assume was to be held some time prior to March 15, 1945, were to be taken up with the New York office of the Scientific Nutrition Corporation. Is that correct? Is that your understanding?

Mr. Agee: I didn't hear it quite that way. I understood him to say, I may be wrong, they would have to get the approval of the Eastern people.

Trial Examiner Lindner: That's right, either that or they would have to contact them. That is, that Mr. Capolino was not in a position to negotiate any further without the approval of the New York people.

Mr. Agee: The sense of what I got rather than the literal wording was that Capolino was no longer in a position to be the last word for the employer, and that he wanted them to know that.

Trial Examiner Lindner: That is right. What is your contention with respect to the time period between March 15, 1945, and May 18, 1945 when this contract was signed with the International Brotherhood of Teamsters? [173]

Mr. Agee: My contention is that the contract with 22382 remained in full force and effect until May 18, 1945, under the terms and the provisions of the Master Agreement.

Trial Examiner Lindner: That, despite the fact that 22382 had already been advised that until Mr. Capolino received approval to negotiate that he could not negotiate for the company?

Mr. Agee: That is correct, because the provision is one usually found in contracts that are designed to be reaffirmed from period to period.

Trial Examiner Lindner: Was there an automatic renewal in the Master Agreement?

Mr. Agee: Yes. In other words, the union can give the employer 15 days notice that it is not going on with the contract at the expiration period. The employer could do the same.

Trial Examiner Lindner: Don't you interpret what Mr. Capolino did in this case as notice to 22382 that that contract would not continue?

Mr. Agee: No, I think what he did with them was this: That he said, "Now, in negotiating with me this time as distinguished from previous years, I want you to be advised that by virtue of the purchase of my company by this corporation back East, I have to get their approval." In other words, I don't think he wanted to let the union think that he was acting in bad taste by their going along and opening negotiations in the customary period before the canning season opens March 1st of each year, and then saying "Here, you are stalling us, delaying us, not signing up with us. You are talking about sending back East. We never heard of it."

Trial Examiner Lindner: Did Scientific Nutrition Corporation make any affirmative move to authorize the automatic renewal of that contract?

Mr. Agee: I don't know, I can't answer that.

Trial Examiner Lindner: Did they authorize Mr. Capolino to automatically renew the contract?

Mr. Agee: I don't know that. I would like to state for the record, before today I never met either Mr. White or Mr. McIsaac or Mr. Capolino in my life, so these people are entire strangers to me.

Trial Examiner Lindner: Thank you.

Do you have anything further, Mr. Tobriner?

Mr. Tobriner: I do want to say on the record that Mr. Tillman's easy disposition of the decisions of the Board strike me as a little difficult to follow. I understood that when the Board made these decisions that it meant what it said, and I sure the employer took it that way too, and when they were told by the decision of the Board they had a valid closed shop contract or valid contract and they were [175] supposed to abide by them until their expiration date, certainly the Teamsters, the American Federation of Labor and I am sure the employers must have taken the word of the Board with considerable weight; and I am somewhat shocked and surprised at Mr. Tillman's statement that "while the Board might have been wrong," we don't think the Board was wrong in what it said about these existing contracts. We may not have agreed with the Board in what it said about future contracts, but that issue does not arise in this case.

We also say, particularly in view of that language, we are again particularly bothered by the fact that if there was any question about this, at least the Regional Office should have acted

promptly, not let this situation run for one year in view of these decisions, and in view of the whole picture we have here. Technically, the Regional Office may say "Well, that is not laches." I don't suppose the Federal Government is bound by any special doctrine of laches, but I believe for the good dealing for the sake of all parties involved, that is a most important element to consider.

When you think of this picture as far as this employer is concerned, the fact he was bound to AFL and took these careful steps to make sure that his workers did want the Teamsters and AFL, I think that this record is replete with a showing that the employer did not commit an unfair labor [176] practice.

Trial Examiner Lindner: Do any of the parties intend to file briefs?

Mr. Tillman: No.

Trial Examiner Lindner: Mr. Agee?

Mr. Agee: I have no intention to file a brief.

Trial Examiner Lindner: Mr. Tobriner?

Mr. Tobriner: Since we have a hearing come up the day after tomorrow, I think not.

Trial Examiner Lindner: Should any of the parties file briefs or want to file briefs, briefs shall be directed to the Trial Examiner in care of the Chief Trial Examiner, Washington, D. C., and shall be filed on or before May 24th. The hearing stands closed.

(Whereupon, at 4:40 o'clock p.m., Tuesday, May 14, 1946, the hearing in the above entitled matter was closed.)

[Endorsed]: No. 11694. United States Circuit Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. Scientific Nutrition Corporation, doing business as Capolino Packing Corporation, Respondent. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and California State Council of Cannery Unions, AFL, Intervenor. Upon petition for enforcement of an order of the National Labor Relations Board.

Filed July 23, 1947.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit:

